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ABSTRACT

The proceedings of the Confernce on Funding of Clinical Legal Education is presented, along with a commentary and report of floor discussion. An overview of clinical legal education is provided by Eugene F. Scholes. Two papers discuss funding of clinical legal education by foundations and other private sources (William Pincus) and by the university, state, and other public sources (Millard H. Ruud). The legal services interest in clinical legal education is examined by Robert D. Evans and S. Shepherd Tate. The remaining papers are concerned with: current cost of clinical legal education (James P. White and Peter deL. Swords), clinical legal education and the promotion of national goals (Dean H. Rivkin), converting the support for clinical education from soft to hard money (John R. Kramer), federal responsibility for clinical legal education (John D. Scarlett) and HEW guidelines for funding under Title XI (Donald N. Bigelow). (SPG)

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Association of American Law Schools

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Proceedings

MARCH 3 and 4, 1978
VANDERBILT UNIVERSITY
SCHOOL OF LAW
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FUNDING OF CLINICAL LEGAL EDUCATION

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PREFACE

The Association of American Law Schools sponsored the Conference on Funding of Clinical Legal Education with support from the Council on Legal Education for Professional Responsibility. The Conference was conceived and directed primarily by Professor Junius Allison of Vanderbilt University. The Association is grateful to CLEPR and Vanderbilt for their contributions to the success of the Conference.

Two decisions made in editing of these proceedings should be explained. First, the remarks of principal speakers have been edited to appear as separate units. In most cases, the speakers worked from notes rather than prepared papers, and their conversational style has been preserved for publication. Secondly, principal addresses, commentary and floor discussion have been rearranged for reader convenience and do not appear in the chronological order in which they occurred. This decision also resulted in collapsing all floor discussion into a single unit, although it comprised three separate segments of the Conference program.

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WELCOMING REMARKS

Robert L. Knauss
Dean and Professor of Law
Vanderbilt University

On behalf of Vanderbilt Law School, I am delighted to welcome you to this conference. We are pleased to be in a position to host this meeting, and as I believe most of you probably know, the reason for this is that Junius Allison, who is now Emeritus Professor of Law at Vanderbilt, had the original idea and concept for the conference, and presented it to Bill Pincus at CLEPR and Millard Ruud and Wayne McCormack at the AALS. One aspect of the initial concept for the conference was relatively narrow -- looking at Title XI, the prospect for federal funding of clinical programs, and the guidelines to be applied for allocation of federal funds. It quickly developed, however, that to adequately look at those questions it was necessary to go broader and examine the total cost picture in respect to clinical legal education and alternate funding sources.

For most of us, the last few years have been a time of agonizing reappraisal of the clinical activity. Our own situation at Vanderbilt, I think, is fairly typical. We had in the early seventies built a very strong and diverse program which was primarily financed through soft money. Within the last two years we have been forced to transfer almost all of the clinical law funding to our hard budget. We have been pushed in a way that was not true in the past to look at clinical education and make some priority judgments concerning it. In many respects this has not been all bad -- in fact, again reflecting on our own situation, there have been some very strong positive aspects. By forcing the full faculty to look at clinical education in respect to other priorities in the Law School, we now have a consensus which was not true in the past (and I will say it is a modest consensus) that clinical education does have a proper place and role in the Law School's academic curriculum. Faculty members on one side of the building have been forced to become acquainted with and understand what in fact has been going on over in the other side of the building housing the clinical activities. Some minimum range of understanding and comprehension has been brought to the full faculty on such questions as: What are the skills that clinical education aims to address? Does clinical legal education mean only actual client-related programs, or does it include simulations, role playing and straight work? Where do the more traditional offerings of moot court, trial practice, litigation, and the newer subject matters involving negotiation and counselling fit into clinical legal education?

As long as the clinic was being run primarily on soft money, the bulk of our faculty had little care or concern -- but now when the tradeoffs are presented to them in respect to new faculty positions, salary increases, financial aid support, library support, and other Law School needs, the faculty involvement is strong. In this respect the crunch of the last couple years has been very positive.

The negative side is that we have been forced, and again I think we are somewhat typical, to in fact cut back on the total scope of the program. Just at a time when some our programs were being shaken down and some strong aspects of quality control were being exercised, we were being forced to provide some limits.

To run these programs properly is expensive. I am convinced, after looking at our own figures (obtaining data on this is one of the objects of the Conference), it is substantially more expensive, whether calculated in cost per credit hour, or some other basis, than traditional course work.

In my mind this is the principal reason to look outside for funding. In one sense you could say that our educational dollars are fungible. I am happy to look outside for money for any purpose. I would like outside funding for libraries, I would like outside funding for financial aid. For any piece of this organization. The rationale for outside funding for clinical legal education rests on two grounds. The first, I already mentioned -- it is substantially more expensive to do right than regular classroom instruction. If it is going to be a part of a program we need to help to finance it.

The second justification is that client related clinical programs do provide positive benefits to the community. Some recognition of these benefits should be given, and costs should be shared.

The last introductory point that I would make in connection with this conference is that there are about 90 law schools represented in attendance. There is great diversity in these law schools. I suggest that in whatever guidelines or recommendations that may come out of this conference we need to keep in mind the virtue of diversity and the need to accommodate experimentation. Different law schools do have different needs, in clinical education as in other parts of their programs. We should not let ourselves be in a position where some guidelines are established that are going to force conformity.

I'm now pleased to turn the program over to our moderator for this first session, Eugene Scoles, former Dean of the University of Oregon -- currently Visiting Professor at Stanford -- and currently spending a very, very busy year as President of the Association of American Law Schools.

CLINICAL LEGAL EDUCATION -- AN OVERVIEW

Eugene F. Scoles
Professor of Law
University of Oregon

When many of us went to law school there was almost nothing that could be called clinical legal education. Legal Aid was an extracurricular activity where you could work with a legal aid office or a legal aid lawyer. The rumors were that it was interesting and you could get some experience that gave you a glimpse of practicing. Also, there was the student who worked part time out of economic necessity in a law office. In that office the student did whatever needed to be done and on occasion a little legal research.

In most places 20, 30 or more years ago there was faculty suspicion and distrust of anything that bordered on the "how to do it." A few courses in office practice and trial practice were found in our curricula along with moot court; but seldom were serious efforts made to incorporate exposures to law courts, to offices or to clients into the regular educational program. There were some important exceptions to this, as for example, at Duke and at Tennessee, but the generally accepted view of legal education encompassed only traditional classroom work.

With the 1950's and the 1960's came an increased awareness and protection of litigant's rights and particularly the extent to which the poor were under represented. Faculty people shared, if they did not in fact lead, in that awareness. Public legal service began to increase, and with it the desire of law students to participate in the service aspect increased. Out of that period grew increased litigation and in this particular era the use of law students and law school facilities in legal services increased. Faculty people began to work with law students in a variety of ways to emphasize the educational value of this experience. The third year law student representation rule became popular across the country and made student court appearances possible. The Counsel on Legal Education for Professional Responsibility came on a scene which was ripe for experimentation in various forms of clinical education. By the early 70's law schools and law students were involved in many varieties of clinical experience.

During that same period, litigants and the case load in the trial courts increased many fold, and as a consequence many court appearances were being made by attorneys who had had rather limited trial experience That, you will recall, resulted in some criticism of the competence of the trial bar. The chief spokesman, you also will of course recall, was Chief Justice Burger of the United States Supreme Court. Beginning in 1967 the then Judge Burger decried the lack of trial competence of many lawyers, and he has continued this criticism to very recent date.

There is clearly a need for lawyers who try cases to have adequate educational background before doing so. There is also a recognized need for the entire profession to have an awareness of the trial function adequate to counsel and to plan to avoid the consequences of trial. In

many parts of the country we are seeing an increasing number of young graduates going into practice by themselves without the benefit of association with more experienced lawyers. Even in the smaller communities, the more competitive circumstances may be discouraging older lawyers from giving the helping hand that formerly characterized our profession. That suggests even another reason for law school attention to this matter.

The perspective in the law schools today is very much changed. As Dean Knauss suggested with regard to Vanderbilt, elsewhere also law teachers accept clinical education as a valuable part of the law school curriculum.

For all of the reasons that we have noted, clinical education is recognized as a vital part of understanding our legal institutions and the function that lawyers perform in our society. Thus it becomes an important method for understanding professional responsibility and the significance of other courses in the curriculum. Further, it is perceived as important at the level of the best kind of educational experience rather than simply as a simple "how to do it" exposure. For instance, the present day perception is no longer, I think, concerned with proving the value of clinical education, but rather how these efforts can be integrated into the curriculum with a full sharing of the academic function of educating lawyers for the half century of service that they begin when they leave law school.

In the special setting of present day law school, values other than these learning values may exist for some of our students. Clinical education is of special interest to minority and women students. It gives them a variation, for one thing, on the setting in which they can perform and be evaluated; but more importantly, they often believe that it helps them provide credentials for entering the profession as working lawyers. It provides additional image changing certification to an employer against the historical backdrop of employer experience dominated by white males. Those who are interested in increased participation of women and minority lawyers in the profession support clinical education as an important vehicle for accomplishing that objective.

There are many patterns of clinical education in our law schools. It probably would take the whole afternoon if I were just to list the various patterns, but suffice to say that these range from "total in house" programs of direct client representation or "in house" simulation or role playing programs through cooperative arrangements with outside agencies, to the extreme of unsupervised student attachments to law offices in various forms. We find not only court room and law office experience but also legislative and administrative exposure as well. Some of the programs can be said to have demonstrated educational merit, and some remain to be proven in that regard. I believe it can be said that we, in legal education, are now in the process of reviewing our experiments, consolidating our gains and seeking some guidelines for measuring the different educational values that can be gained from the various patterns of clinical programs.

We are not afraid of experimentation. Given the increased credentials and quality of law students or students coming into law schools, we are able to spend more time in skill training than formerly. We can experiment in many ways with integrating clinical programs into the

educational process with these very able students at very little risk to the student. Even so, we are in a period in which we are more sensitive to the educational requirements of clinics than to the service aspects for the reason that law schools remain primarily educational institutions.

To be effective, most people agree that client contact clinical programs need to have low student-teacher ratios. Ten students to one teacher-supervisor is a near maximum. Ten to one requires, for most law schools, a very far greater faculty allocation than for most law courses elsewhere in the curriculum. You may question that difference but in the clinic we are attempting to accomplish much of the one on one experience that a young lawyer might expect from a senior partner when entering a law firm. And if you consider the problem of ten new lawyers just out of law school being brought into a law firm for each of the experienced lawyers in that firm, you get some sense of the total involement of the law teacher in a few number of students. That's the burden that is being shifted from the practicing profession to the teaching profession in the law schools. That does make clinical education very expensive.

The resources for the faculty must be provided by additional sources outside of the regular program either from student tuition or other sources, or if not provided by outside sources, they must come out of the rest of the curriculum. We ought to observe that this is not just trading three hours of credit of torts, for three credit hours of clinic because the student-teacher ratio is so low in clinic work. And I believe necessarily so.

In addition to these financial concerns, there are other concerns which relate to maintaining quality in education. The rigor and intellectual content of clinic courses needs to be assured. Other areas of concern to educators, such as the expansion or the development in other areas of law that should be covered in law school and which demand new courses as well as the expectation of faculty participation in law school determination of policy and decisions and faculty scholarly production are difficult to reconcile with the immediate and unpredictable pressures of clinic responsibilities.

All of this creates internal tension in the law schools as we struggle with more complete integration of clinics into the curriculum. We must recognize that notwithstanding the recognized great value of clinical education, there are also some real dangers. We may not give the students the education and the training that we claim we are giving. They may be short changed. The law schools may permit the clinical program to become solely service without a genuine education experience. A danger often unforeseen is that in our clinical education we may give students a false security in a training inadequate to the many tasks that will come to them that will encourage young lawyers to overreach their ability and hence make them dangerous to the public and expose the students to malpractice claims.

Against this background, however, it is clear that clinical education is a permanent feature of legal education. Faculties everywhere are working at the process of improving it and fitting it into the particular program of each law school.

The interest of the law schools, the American Bar Association, and the Association of American Law Schools is reflected in the Joint Committee on Guidelines for Clinical Education. This year and next that Joint Committee will analyze developments in clinical education during the last decade and develop guidelines for the conduct of various forms of clinical education in the future.

In addition to the conferences in which we participate like this one, the Association of American Law Schools through its Professional Development Committee, again with the support of the Council on Legal Education for Professional Responsibility, has embarked on a series of training conferences for clinical teachers. For several years the AALS has had summer clinics for law teachers with a general coverage. We have concluded that we should add training conferences specifically designed for clinical teaching. In 1977 the first training conference for clinical law teachers at Cleveland was oversubscribed and very well received. And we believe that the future ones will be even better structured building upon that experience.

As you can see, although there are many other concerns, the central concern is finding the resources with which we can make the clinical experience for law students one of truly educational and lasting value.

We at the Association of American Law Schools are pleased to have a part in this conference and we are looking forward to many constructive suggestions that I am confident will be made.

THE ROLE OF FOUNDATIONS AND OTHER PRIVATE SOURCES IN FUNDING CLINICAL LEGAL EDUCATION

William Pincus
President, Council on Legal
Education for Professional Responsibility

There is no subject that's dearer to my heart in the way of professional interests than clinical legal education. And it's a pleasure to be at a meeting like this which is under the auspices of the Association of American Law Schools.

If you will bear with me briefly, I will take advantage of the time I have up here to start out first by saying that I have to recognize that for some of us this is a celebration as well as being something else. Bob Knauss has already mentioned that Junius Allison is responsible for this meeting and that it was his initiative that prodded us to finance, and other people to organize and sponsor this meeting. I want to recognize him for that, but I want to go further and say that I think it's a celebration of more than 20 years of being involved for someone like Junius, who I suppose is the only person in this room who has been with this thing as long as I have at this point.

And Bob Knauss also referred to Duke and Tennessee, and I'd like to mention John Bradway and Charlie Miller, respectively, from Duke and Tennessee. Because while others in the past, as you all know from writings that you have read and heard about, have talked about clinical legal education or clinics -- those people did something about it. They were the pioneers. They were out there before those of us who came in with foundation money were able to do more about it.

So I am very happy to be able to mention them, to pay homage to them, and to express our love and affection to them for all they have contributed. And I am so glad to have Junius sitting there and looking up at me as he used to do so often in the past.

Now, the second thing -- this is all by way of introduction -- I'd like to say that I know we are at a time, and that is the reason for this meeting, when we need substantial funding of the kind that we have never had before, that foundations could not provide, and cannot provide to make the next big move forward in this field.

I am referring here to Title XI. It's been on the statute book for 10 years or so. The first million dollars has been appropriated. We will hear more about that, I'm sure. But the point is that we cannot let this opportunity go by to exploit this breakthrough, to follow up on this one million dollar appropriation.

The one million dollars is very, very insignificant by itself as an amount of money, compared to the fact that it represents the first appropriation. The AALS and the ABA -- I'm sure they are working on this -- but I just must underscore the need for more work. AALS and ABA must make tremendous efforts to be sure that a lot of money is appropriated from here on out under Title XI. Much more than the one million dollars a year that we have now started with. Because it is not anything but a token, but it's a token that we are certainly glad to have. And it's our first opportunity to do something.

So I hope that after this meeting we are going to have a lot of action in terms of contacting the right people, and I'll be specific -- senators and congressmen -- to be sure that they are understanding of the need for funding this on a major scale.

Now, in the third place, as a general title, if that's what I can put on my comments, I have chosen the phrase "From clinical courses to clinical curriculum" because I believe that's where we are at this point.

Everything that we have done up to now has resulted in having a lot of clinical courses in a lot of law schools. And everything we need to do from here on out is to work toward developing those courses into a clinical curriculum and toward integrating clinical teachers, as the schools are already doing, into the total faculty or instructional resources of the law school.

Now, having said that by way of introduction -- I am addicted to history and in this case it's my history so I'm not going to lose the opportunity -- I think it's valuable to tell you how we got where we are because it will explain to you what I said about where we are, and it will explain to you why I am saying to you from here on out we ought to go in certain directions.

This whole thing that we are talking about right now, leaving aside occasional articles and exhortations in the past about what the law school ought to be like, started in 1959 when the Ford Foundation made a first grant to the National Legal Aid and Defender Association -- that's where Junius Allison came in. He was in the picture even before then, because the grant was made in '59 but we were talking about it at least a year before then.

And Junius and his then colleague, who unfortunately hasn't lived to see the fruition, Emory Brownell, were the people who were involved; and also our dear friend -- who has also passed on -- Orison Marden, who was the President then of the Association.

These people were willing to cooperate with some legal educators and others in the Bar to create what was then known as the Council on Legal Clinics, with what now looks like a small appropriation but was then a gigantic appropriation of $800,000. That Council funded the first projects to get law students out of the classroom and begin to add other dimensions to legal education.

In 1965 that grant was renewed in the amount of $975,000 and the responsibility for administering the grant was transferred to the Association of American Law Schools, which then renamed the Council as the Council on Education for Professional Responsibility.

And so that work continued. In the meantime, in 1963, between 1959 and 1965, in 1963 the Ford Foundation made the first grant again to Junius and his colleagues in the National Legal Aid and Defenders Association for what was known as the National Defender Project.

That got big funding by that time -- $2.4 million dollars -- even for the Ford Foundation. Subsequently that was augmented by other grants, bringing the total amount for the Defender project to $6.2 million dollars. Now, the Association hired as the Administrator of that project, under Junius and his colleagues, General Charles L. Decker, then the Adjutant General of the United States Army, who left his position in the Army and became the Administrator of the project, and his name must and should be mentioned. Because he had a lot to do with the imaginative administration of that project.

Many of the clinical projects which we are able to pick up as already in being when CLEPR came along had been started under the National Defender Project, just like a number of them had been started under the predecessor projects of the Council on Legal Clinics and its successor.

And also, Title XI exists today, I think it's clear, because General Decker, who had been the Administrator of the National Defender project, worked for the enactment of Title XI.

Now, these two projects that were laid out and developed by the Ford Foundation and those people that worked with it under these grants seeded clinic projects around the country.

However, there was not at that time any explicit program for clinical legal education. There was a mixture of motivations -- each one meritorious on its own. There were two major ones. So far as the predecessors of CLEPR are concerned, first under NLADA and then under AALS, the main objective of getting students out of the classroom into field projects, some with legal aid clinics, but a lot of other kinds, was to expose them to things that were going on in the outside world, outside the University campus, and the objective was something like education by osmosis.

The thought was by exposing law students to the miseries and complications in some of the parts of the outside world that they wouldn't ordinarily be exposed to that they would become alerted to, and even interested and concerned in doing something about them. And that was the connection with the phrase professional responsibility. That was the thought behind that group of projects.

Then the thought behind the Defender project was clearly one to improve the level of operations in the Defender offices around the United States, which was so abysmally low in 1963 that it's hard for us to conceive of it today.

Remember that that first Ford National Defender project grant was made in December of '62 but not announced until February of '63, and it wasn't until March of '63 that the Supreme Court handed down the Gideon opinion mandating counsel in criminal cases.

So that the level of operation in the Defender offices was abysmal. Let me say this. When we started to work with Junius and his colleagues in NLADA the entire budget for all legal aid services in the whole United States was five million dollars. That was an extravagant estimate.

It's hard for us today to imagine what the situation was then. So the Defender project was first to lift the level of Defender operations by example, by strengthening certain offices; and also at the same time train a certain number of well prepared criminal lawyers in those offices who would then go into the field, teaching and practicing. It was in that context that the project enlisted the cooperation of law schools, their students, and provided graduate fellowships occasionally.

There was one other project in the United States that was operating in the field shortly after the inauguration of the National Defender Project which continues today and deserves to be mentioned, and that is the Prettyman Program at Georgetown University. But that was it.

Now, one of the lessons of history is, that we're all influenced and our lives are guided by a lot of accidents. Here were these two projects on their way, funded, operating. But in May 1967 people in charge of the project that was being administered by the AALS because of some things that had happened that were simply administrative in nature -- people changing jobs and things of that sort -- took a look and said, "Why can't we do something more effective, bigger, and more lasting than what we have been doing up till now, funding an occasional project in a law school which gets students out of class?"

It was at that time that they persuaded the Ford Foundation to provide millions of dollars, instead of hundreds of thousands, and gave me the opportunity to leave Ford to head up what became CLEPR. That happened in the spring of 1968.

So it took 10 years from the time of its antecedents to the creation of CLEPR which then at that time, for the first time gave a specific direction leading to where we are now.

Now what has CLEPR done? CLEPR -- Council on Legal Education for Professional Responsibility. First of all, CLEPR gave specific meaning to clinical legal education.

It's a meaning that is entirely consistent with what is provided in Title XI so that I think our efforts have been helpful not only in what they accomplished per se but they worked consistently with Title XI and it's a coordinated result now at this point.

We articulated the educational values of clinical education. We said that clinical legal education has two main benefits -- groups of

benefits. It teaches lawyers certain skills. But more important, and this has been the hardest thing to get across -- that's why I am using the opportunity here to say it again -- it accelerates the growth of the professional, the lawyer to be, through giving that person an opportunity to assume responsibility. That's what professional responsibilities mean -- assume responsibility with regard to a whole cast of human characters going way beyond the characters that he has already met, that she has already met, in the educational setting.

This is what makes a person grow, expand and learn how to function in the last analysis as a bigger human being and ultimately as a better lawyer.

And then in the third place, of course, we planted an enormous number of clinical programs, enormous by contrast with what was ever existing before around the country. There we had the idea that enough programs had to be started so that they had enough chance to develop on their own, assume their own shapes, and provide the reality out of which the law schools and the legal educators could take what they then thought was the most useful, the most desirable.

Now, we have made as of now 209 grants to law schools totalling $6.4 million dollars. If we add 11 grants made with Justice Department money from LEAA way back around 1970 for clinical programs in prosecutor offices, the total becomes $6.65 million dollars.

By this summer when we make our next round of grants, we will have granted over seven million dollars. This was seed money because it was always part of a required 50-50 match over a two year period by the law school.

This seed money has resulted, and now we are coming closer to where we are now with Title XI and where we have to go, has resulted in the law schools' spending, according to the best estimates we can make, over $15 million dollars annually of their own money, because first they had to absorb the over six million of our money and they have gone on to add enough to make a total of at least $15 million dollars in total expenditures annually for clinical legal education around the country.

This was the first phase of CLEPR's operation. This we did. Until two or three years ago we did nothing but start and slightly expand clinical programs. We can't do it anymore. First of all we shall soon be entirely out of grant money.

And secondly, even three years ago when we still had money to grant, our very success, the seriousness with which legal education took up clinical work, made it impossible for us to be effective in the original way in which we were. That is, $35,000 or $40,000 or $50,000 grants are not that important any more compared to the need, as important as they were when the law schools had no clinical program. Then they were a tremendous help to the law school in getting started. Now the law schools need hundreds of thousands to expand and improve clinical programs.

Two or three years ago, therefore, recognizing that and recognizing other needs, we moved from starting programs to taking up special aspects of the clinical legal education picture in the law schools in regard to which we could be a help with our remaining resources.

The things we started to work on, that still need to be done, probably are the kinds of things, looking at our program here, that foundations should continue to do. They require the kind of fine work and delicate work that the big clumsy hand of government sometimes is not too well suited for and shouldn't be intruding upon.

For instance, one of the things we have been interested in and working on are the salaries and working conditions and status and job security and personnel system involving the integration of clinical faculty with the rest of the faculty in the law school.

We started with two grants to raise salaries at the end of '76. Last year, we made almost half of our grants -- seven out of 15 -- for that purpose. This year we are going to make some more. That needs a lot of work. Probably private foundations ought to be working on that sort of thing.

Teacher training -- well, there's an area where you could have joint work -- public and private funds.

Physical facilities. That's something we have gotten into which requires a lot of money and attention. I think that we could have joint work by public and private sources.

Testing. We've lately gotten into the business of finding out whether we can have people identify exactly what it is that's being taught in clinics. And secondly, can we test for it in an objective way? Which goes beyond the assessment by the supervisor, which is still fundamental and possibly could be the most important.

And finally, standards. Gene Scoles mentioned the project on guidelines for clinical programs, the project which is the joint project of the ABA and the AALS. A lot of work needs to be done on that. Steve Leleiko, who is the staff director of that project is here in the audience. He's going to be busy on that with his committee for the next two years.

Now, some of us differ on our assessments and sometimes on the words we use. I started out by saying and I repeat, I think the law schools now are serious about clinical education. I would hesitate before saying that, as a general rule, they are committed to clinical legal education.

If I were making this speech five years ago, those of you who know me know what I would be saying. I wouldn't say they were serious.

So I think it's a big move forward. I agree with Gene. I think the schools are serious. I think it's an enormous step forward because educational methodology is what clinics are about. I come back to my title, "From Clinical Courses to Clinical Curriculums." Educational

methodology is not a subject of great interest or of any importance really in higher education generally. I'm not limiting this to law schools. It doesn't take long for anybody who knows anything about higher education to realize that higher education does not put a premium on developing teachers who are interested in how to teach, as contrasted with being experts in what they are teaching.

As I say, it has nothing to do with law schools alone. It goes across the board.

Yet I think we have to appreciate that law schools have become more interested in educational methodology because of the clinical movement, because of the introduction of clinical courses. And I think this is a tribute to law schools and I think it is an enormous development. A very significant development.

The people who haven't become either educated or involved, and that's why I am waiting to hear the speech tonight by my friend Shepherd Tate, are the bench and the bar. With rare exception they don't even know what is going on.

I'm not just speaking in a general way as an observer. For seven years now I have been a member of the Council of the ABA Section of Legal Education, the one that accredits law schools. And I know from participating in that Council that, apart from a curious type of character like myself who is a member and apart from the legal educators who are either members or have sat in on our meetings, the judges and the practicing lawyers who profess to have such a profound interest in how lawyers are educated and how they are admitted to the bar have very little if any interest at all.

Now there is an area where I think we in the foundations not only have made a start but have to keep working. Because that certainly is an area where government cannot come in with very much effectiveness. And we have started to do certain things. And we'll do more.

For instance, we've organized with the help of the ABA and the AALS what's known informally as the Mayflower group because we had our first meeting in the Mayflower Hotel at the time of an ALI meeting. It's a group where for the first time we've tried, as they have done in medical education for some years, to bring together legal educators, the organized bar, the Conference of Chief Justices, the National Conference of Bar Examiners, the Law School Admission Council, and two or three others -- and they should be together. At least to talk to each other twice a year to tell each other what they are doing and what's going on. This has never happened to this field in which we are all so much interested.

We've just had a book published which you'll be aware of. It's 1250 pages. It's been published commercially by Ballinger Press, and it sells for the small amount of $100 a copy. So obviously we expect to get a lot of official agencies as patrons because most individuals are not going to run out and buy it. But it's the first time there has been a compilation of all the rules for admission to the bar; and all the student practice rules; cases that pertain to those things; and

charts that illustrate briefly what they are. Commentary and Analyses, etc. And there is an essay by me in the beginning which is easily worth $100, in which I berate mostly the Bar and the Bench for the very fact that they haven't paid any attention and they are the ones who have been licensing lawyers.

Thank God for one thing. The bar and bench give a lot of credence and credibility to what the law schools and the legal educators do; and to the extent that the schools have moved ahead there is some hope that they will be influenced -- I mean the judges and the lawyers, but it's not enough to wait for them. We have to go out and work with them. And there is an area where private agencies like foundations can be helpful.

Now, the big area is Title XI money or money from Legal Services Corporation.

That kind of government money is essential. You must go out and get it. You must put the heat on these guys. Why? Because it's doubtful whether there will ever be another foundation with $11 million dollars in this area. That kind of money many times over is needed. You are talking now of a need, according to our estimates, over the next five years or ten years at the most, and you must move -- on upwards of $50 million dollars. Now that is not a lot of money in the United States of America. It is a pittance as far as the nation is concerned. But on an operational basis who is going to put it up? Well, Title XI is a possibility. And Legal Services Corporation ought to be putting up a good part of this because who in a clinic is not providing legal services? You can't educate clinically without providing service. Gene Scoles referred to that. Anybody who knows anything about it realizes that.

Now, the fact is that only 30 percent of law students are getting any kind of clinical education at all. I estimate that perhaps 10 percent at best are getting a good clinical experience. I mean well supervised. Whether it's in house or farm out -- what we call sometimes out house, but I won't use that term too much any more. Because I think that's one of the frontier areas. That's where the money from Title XI is needed as much as in house.

There has to be much better supervision in both locations. And if we are going to expand the placements, the opportunities for students to work in a clinical setting and to be supervised -- that's where the money goes. In our grants, if you analyze them you will find that at least 80 to 85 percent of that money went to salaries of professors, clinical instructors, to supervise the students. That's expensive. That's an expensive necessity -- that kind of salary money multiplied by the number of positions -- required for supervision.

Incidentally, we are raising the salaries so we break the bind between clinical teachers salaries and the depressed salaries in legal services offices where so many of them came from, and should continue to come from as well as from other places.

You multiply $25,000 which is about what these people ought to be averaging, if not more, times the number of positions that are needed. You will see how much money is involved. This is not going to come from private philanthropy.

And it's got to be given to the schools from now on without the kind of match that CLEPR has demanded. We had to do it the way we did it to make the money go far; to make an impact; to get the schools to commit themselves to what they were taking from us. We couldn't give anybody a free ride. The government is the only one who can and should provide large amounts of money and provide it either on the 90-10 basis which Title XI provides, or even better. They have got to give large amounts of money to law schools and they have got to get educated on this subject.

I testified two or three times years ago now on Title XI, and the interesting part of this was that the congressmen and the senators made it perfectly clear that they didn't need any convincing on clinical education -- not once did they even ask us to define it when I was in their presence. They were sold on it because they equated it with what they knew in medicine.

What they were in trouble about was the lack of political pressure which enabled them with their own colleagues to obtain funds for clinical education. The now more famous than ever Congressman Flood, who was the Chairman of the -- who still is the Chairman of the Appropriations sub-committee which controls this area, told us point blank when the hearing adjourned, he said, "Look, friends, I am all for you. But when I go into my sub-committee executive session everyone of my colleagues has 52 pet projects that he wants money for. And if I can't say to them that all the law school deans and other people and the organized bar want this money for the law schools I am not going to get it from them because I just tell them I like it. That doesn't cut any hay in the legislative process."

It's a question of pressure against pressure, demand against demand. That's what you are here for.

Now, incidentally that's the same kind of approach that ought to be used with the Legal Services Corporation. And never mind their worry about their existing clientele. The only good argument I have ever heard from them against giving money to law schools on a national basis is a political argument. They said, "Well, we've got all this clientele already on the payroll. The legal aid offices and those people." We have to say, "So what?"

Now, we come to the question of fund raising by the law schools themselves. I think this is something that they have to get into. The law schools have to begin to use their credit as fund raisers where they can, specifically to raise money for clinical education. We've made a few grants to help in that connection. We hope our board will approve

one we are recommending now for a very well known national law school which at a time of stringency is going to step out and use its credit to raise money for its clinic.

That kind of thing needs to be replicated all over the country. Foundations can do something about that. I don't think you are going to get the government giving a matching grant to a university to go out and raise money. So there is something that foundations can continue to do.

Now, the last thing is the biggest area, I think, remaining for private foundations to work on: creating what I have talked about as part of the title of all my comments, a clinical curriculum; moving from a series of clinical courses which are now disconnected in the law school curriculum to a clinical curriculum so that in the first, second and third year there is a sequence of experiences that fit together to give students increasing responsibility with clients and to improve their skills as they go through.

That's the kind of thing I think that foundations, if they have more money, should do a lot more work on. We've done some already. It's a little bit complicated, I think, for government agencies. It takes a special kind of administration grants. The government could do it in terms of giving out money, but I don't think that they will administer with as much exactitude or as much detail as we are able to do in private philanthropy.

And in that connection when we are about creating a clinical curriculum, we ought to do something else. We ought to follow up on what is already started. We ought to work at putting into that curriculum, again with private foundation help, certain existing courses in the law school which are now beginning to cluster normally under clinicians, for example, trial practice and moot court. We ought to take a look at evidence and procedure for possible inclusion in the clinical curriculum. Legal writing and research is already falling into that area. Courses in professional responsibility. There is a lot of work to be done there. So that the law school treats clinical education not as individual courses but as a clinical curriculum. This is the note I want to end upon.

The law schools are serious. I think they are coming to this. But I want to articulate this to put my vision in front of everybody, very, very specifically.

Clinical education came in the way it had to. It came into an existing institution. The way you put things into that institution like into all other higher education, was to add courses. You didn't add a whole curriculum. You added courses. Where did you add courses? You added them in the third year.

Why did you add them in the third year? Because they were elective years, in every higher education faculty that's where you drop in new things.

Here it was reinforced by student practice rules which talked in terms of third year student practice. Thus, there were a whole host of reasons why clinical education started the way it did.

But there is no reason now why we can't address ourselves to taking this whole potpourri and making it into a coherent whole, so that from the beginning it's perfectly obvious to everybody that a law school offers two kinds of education and instruction. It offers that which can be given best, and sometimes only through the classroom method which is tried and tested. Through the library. Through the kinds of teaching that we call socratic. And that which can only be given or can best be given through the clinical method.

Each has to exist in the law school curriculum, but each has to be a curriculum.

Now, one final word. Let's not torture everything -- the reason I want private foundations to continue working on matters like these is that I think they can say things -- I hope that we can say things to our friends in legal education that government really shouldn't be saying.

I think that private foundations can say to legal educators things like this, which I don't think government should. "Look, stop torturing what you are doing in clinical education. Don't assume it has to be like the academic side of the curriculum. Don't assume the same kind of person is going to teach in both places. Don't assume that the same personnel system has to encompass both groups. Be open minded about it. See if you can do something to have them live together, but recognize the differences. Let's create something that's healthy for the new one. Keep what you've got that's healthy for the other one."

That's the kind of thing that I think private philanthropy can continue to do, along with creating a clinical curriculum and along with a few other things. But the most important thing right now is whether we continue to do anything. That means the organization of political effort by law schools with respect to the national legislature, the Congress, to make sure that there's more money for Title XI. And a lot more money.

THE ROLE OF UNIVERSITY, STATE AND OTHER PUBLIC SOURCES IN FUNDING CLINICAL LEGAL EDUCATION

Millard H. Ruud
Executive Director
Association of American Law Schools

I am wearing two name tags. One says Willard L. Boyd, President, University of Iowa. Some of you received a mailing indicating that he was going to make this speech. I am not President of the University of Iowa. We had hoped he could give this talk. He could not and never had agreed to.

I hope at the conclusion of my remarks that you do not conclude that what occasioned my being chosen, selected, elected, designated to do this was pure desperation. It was desperation, but perhaps something additional.

I should say that I hope we do not get in trouble with the postal authorities. In the second preliminary program that some of you received that were marked "draft" and others looked like it was the real McCoy, in addition to having Sandy Boyd as the speaker had Tom Ehrlich and Dick Carter of The Legal Services Corporation.

Well, they were speakers on paper but they had not been fully approached and committed. We subsequently discovered that the Legal Services Board met yesterday and is meeting today; and for that reason they cannot be here.

I regret that I was not here on time. As a result I am going to say some things that may have already been said.

This conference seems to assume that clinical legal education is special. In particular it assumes that the problems of funding clinical legal education are special. Is this sound? Is this a reasonable assumption? Are there differences in funding it from the funding of conventional law school instruction? Are there any differences in funding clinical education from funding seminars?

The obvious assumption must be that there are differences. What are those differences? I think there are some differences. Let us turn our attention to what some of those are.

First, I have heard some discussion about comparative costs. It is clear to me as a non-expert on clinical legal education that the cost of presenting a sound program of clinical education is substantially greater, measured in terms of dollars per student credit hour, than certainly the conventional classroom instruction. That certainly does not need any demonstration.

And I think it is more costly than even the conventional seminar instruction. In presenting seminars, you do not have the need for staff support, to pay filing fees, etc. The estimates that I hear from folks who seem to know is that these costs can be higher on the order of three to five.

I gather that Jim White has given you some information on this earlier.

Costs to the law school aside, clinical legal education programs have as a by-product the provision of legal services. The provision of legal services is not a legal education function, in my view.

The function of law schools is legal education. Well, this suggests that the cost of providing that incidental service should perhapd be borne by some other institution.

Those clinical programs that provide legal services that have both an educational and legal service component perhaps should be eligible for funding by some entity responsible for the provision of legal services. The funding of the two different components -- the educational component and the legal services component -- could reasonably be -- should be from different sources and should have different rationales for the funding.

Bob Evans of the ABA's Washington Office is going to talk tomorrow, among other things, about an interesting conversation that was held yesterday morning. Bob McKay, Peter Liacouras, Joe Harbaugh, Edgar Cahn, and I discussed with the Board the corporation's potential interest in funding law school clinical programs. This, I believe, was the first meeting for about half of the Board. It was a very interesting discussion.

In my mind, and to some extent what was expressed, the idea seemed to emerge that perhaps The Legal Services Corporation at some point, not in the immediate fiscal year or possibly next one, could pay for the legal services provided by the law school program. The Legal Services Corporation is committed to providing the poor access to legal services; that has to be its mission. And perhaps it is restricted by the terms of its statute to that.

That approach does not suggest that these funds be available only for law school programs that are purely or largely legal services programs. I do not know whether there are any of those. If there are any, some may have doubts whether law schools ought to be engaged in them.

Although some argue that law schools should have a substantial public service function, most law schools would be unwilling to undertake a clinical legal education program yielding legal services for the poor unless it also had a substantial educational dimension.

But the mere fact that it has a substantial educational dimension, I hope, does not disqualify it from grant or contract with the Legal Services Corporation under which it buys the legal services.

Perhaps the law schools might be willing to strike a bargain with the Legal Services Corporation that the law schools in one way or the other would fund the education component and the Legal Services Corporation the legal services component.

This is a principle easy to state, but its precision formulation and application may be difficult. And I have thought only a little

about the problem. The problem is that of defining what costs are for legal services and what for legal education. But with respect to the Legal Services Corporation and perhaps other public entities that have a responsibility for legal services, including United Way and similar agencies, we should be willing -- we as legal educators and perhaps our association on your behalf -- to work with Tom Ehrlich and Clint Bamberger, the Legal Services Corporation staff and Roger Cramton to develop some formula or formulae for this purpose.

A very crude device, just to indicate the kind of thing I am talking about, would be that of using the Legal Services Corporation experience -- its own experience -- in its own legal services program to develop the cost in a region of providing a particular item of legal service. Fifty dollars for an adoption. Twenty dollars for a name change. Thirty-five dollars for a naturalization.

And then Legal Services would pay the school for the units of services to the poor produced. Well, when you think about that for a minute, you do start to see problems. First, law schools are not used to budgeting in terms of the number of units of product they will sell.

We are used to budgeting that assumes a given amount in hand. We do only a little of the other type.

I recognize also that there are program problems with using a piecework basis for supporting the legal services component. Edgar Cahn and I talked briefly about this while we were waiting at Washington National Airport for the airplane to get to us headed this way. We saw the risk that using that method of financing or paying for the legal services could push the school to emphasize quantity of product over quality of educational experience.

Well, I am certain that those of you who are much closer to these programs can develop ideas for kinds of formulae that can be produced and that we can start talking to the Legal Services Corporation about it. What I am trying to do is simply to suggest, to stimulate your thinking along that line.

Now, the payment by a public agency like Legal Services Corporation for the legal services component does not, in my mind, preclude other public agencies -- other federal agencies -- to wit, the Department of Health, Education, and Welfare -- from assuming responsibility for the educational component.

If we could get it coordinated, we would look to H.E.W. and Title IX for support for the educational component and Legal Services Corporation for the legal services component.

Well, this rationale tries to divide the responsibility between the two agencies. In this way it assigns complementary roles for these federal programs for clinical education.

I should say that there are obviously some risks in doing this. I suppose -- I am willing to try to get for you all the money we can, and I am not insisting that the Legal Services Corporation money be used only to buy legal services. If I can get them to give more, great.

But it may well be that we need to articulate this kind of rationale to succeed.

There is another factor which seems to me that makes the funding of clinical programs different. And that has been referred to. And that is the attitude of some legal educators toward the clinical program.

I must confess that sometimes when I am with clinical legal educators they seem to show a feeling that they are under siege. There is an excessive amount of paranoia. But I am a naive optimist about most everything; so maybe I misjudge the amount of hostility toward clinical education.

I am persuaded that a majority of legal educators fully support programs of legal education. They support them as important programs of the law school.

And I was pleased, Dean Ryman (of Drake) to hear you, an experienced clinical legal educator, give what I think is the most important justification for clinical legal education -- that it is education. I guess one thing we need to recognize in our enthusiasm for whatever we are talking about that there is not just one road to Rome. Most of the kinds of programs we offer in law school, if we do them well, make an important contribution to the education of our students.

And so to say that clinical legal education makes an important contribution to the education of our students, I do not have to say all of the rest of legal education is useless.

But, nevertheless, we do have some who worry about the utility of at least some forms of clinical education. They are concerned whether it has only a limited long term usefulness. Is it education? Is it only a very narrow kind of "how-to-do-it" training? Well, some kinds of how-to-do-it can be important education, too. What is important is the purpose for which the experience is undertaken and the effort that the teacher makes to milk even the experience with a simple legal matter of educational benefits for the students.

Well, one possibility with respect to funding is to say, "We are pleased to get as much outside support as we can but why should not the cost of the clinical program as part of the overall law school program simply be paid from conventional sources"?

One of the conventional sources, particularly with respect to the private law schools, that bulks large is, of course, tuition. To the extent that tuition helps support the program it would seem to follow that all who have paid the tuition should be entitled to have the benefits of the program. And maybe the benefits of X hours of it at least. Now I understand that does present problems for a number of schools. A number of schools simply feel they are not in the position to fund their clinical programs sufficiently to offer the program to all the students who want to take the clinical program. Suppose they wanted to take a full year of it; they may be only able to get a half year.

It seems to me that it would be unfair to fund it with tuition as a substantial component unless the law school was prepared to deliver that educational service to all the students.

Let me offer another idea. I think the bottom line is it is not a very good idea, but I think may be helpful to trot even some bad ideas. Suppowe we adapt the notion of the laboratory fee to clinical education. The law school could say, for example, that a student enrolling in a clinical course would pay a clinical fee of $100 per credit hour.

Some of the conventional justifications that exist for laboratory fees exist in this case. There are special expenses in terms of clerical and secretarial assistance, filing fees and the like that are not associated with the provision of any of the other kinds of educational programs in the law school.

And it could then be argued that the student should pay those extra costs proportionate to the amount of that kind of special education that he or she takes. There are a number of obvious problems with this approach.

First, the major expense, I gather, -- David Barnhizer made reference to it a few minutes ago -- is not the cost of additional rented space, secretarial and clerical assistance, and the like; the principal costs are the teachers.

It could be argued with respect to the teachers that the part of their time is really the provision of adequate lawyering supervision to insure the quality of legal services being rendered and so maybe that can be included in the clinical fee. Or maybe it ought to be borne by someone else.

The more serious objection I have to it, however, is that it is likely to have an adverse impace on selection by students. There will be students who will not take it simply because there is an additional fee. It may well be that a number of those most likely to be interested in the clinical program for a variety of reasons may be students with limited resources and therefore any clinical fee may deter their taking the course.

There are other ways, other sources of money that we may look to to try to help fund the cost of a clinical program. I am a member of the State Bar of Texas. It is an integrated, non-voluntary bar. But I am also a member of the Travis County Bar Association in Austin, Texas, a voluntary association. Some ten years ago we increased the Travis County Bar Association dues from $5 to $30. And the extra $25 went to Travis County Legal Aid and Defender's Society to support legal services.

Rob Williamson (Southwestern University) has mentioned his experience which suggests another approach. Another approach to funding part of the costs of clinical legal education is to ask the clients to pay for it. I think many of you are familiar from what you have seen in Bill Pincus' newsletters and other sources with the programs of prepaid legal services. Ohio State has one. Chicago-Kent has one. Both are, I think, tied in with a union.

Now, it is true under the prepaid legal services plan the services are actually paid by the client's employer and not by the client.

Bob Williamson and his colleagues at Southwestern University School of Law have taken a direct approach. They have experimented, and I gather the experiment has been successful, with charging a modest fee for persons not eligible for legal services under the ordinary test. I think it is up to twice what the income definition is.

The amount of the fee I think is interestingly the same for all cases. And it is based on the client's adjusted monthly income. In addition, the device is used that the payment may be made in installments so that the client may pay it over a period of time.

I gather that the experience thus far is that this source of income comes pretty close to covering the secretarial, other support, filing fees, and the like. It really does not address what may be the larger dollar problem of how do you fund the supervision of the students and the assurance of the quality of legal services.

We have been talking most about the kind of clinical legal education programs that yield a legal services output.

Now, there are some that do not. Clearly there are some that do not yield legal services for the poor. They need some other kind of legal services. We could just simply say they are an educational program with incidental service benefits. They should be paid for and justified as educational programs.

I suppose if we could really get the universities to apply zero base budgeting with a vengeance to legal education we could get the monkey of our bad history off our back. We might get presidents and boards of regents to not look at the dean when he comes in the door wih the budget request, "Ah, here are one of these low cost operations." If they would look at legal education afresh as professional education we should have no trouble getting the needed additional funding.

Well, I am not certain that we are going to succeed at that, but we need to keep trying.

A final, perhaps not very bright notion, but maybe it will stimulate n you a bright notion. As you well know, some clinical programs place students in public or private law offices.

An acquaintance of mine in Indianapolis has six students who are working in corporate law offices. Why not charge the corporate law office or the trust department of the bank four dollars or five dollars an hour for the student's time. Take a little bit of that money to cover the student's bus fare and plow the rest back into the program.

The employer in those kinds of clinical programs would, in a sense, be paying for legal services being received and that money then could be used to help fund the kind of supervision that would make this a useful educational experience to the students.

I think I have demonstrated that I am not a clinical legal educator or a specialist in this. But I hope I have enough of an understanding of what you are trying to do.

I have tried to comment here on aspects of funding only and suggested some approaches with the hope that we can find a way to provide adequate funding for sound programs.

I am fully aware of the obstacles to adequate fundinb, but I am persuaded that we can and we shall overcome them.

Thank you.

THE LEGAL SERVICES INTEREST IN CLINICAL LEGAL EDUCATION

Robert D. Evans
Associate Director of Government Relations
American Bar Association

I would like to follow up, just for a moment, on what our two previous speakers said this morning about the lobbying activity, and I think we are going to get into something of a discussion of that a little bit later.

We, in Washington, will do everything we can in terms of talking to people on the Hill and in terms of figuring out what buttons need to be pushed, but it does come down, basically and ultimately, to the members of the Appropriations Committees and, particularly, hearing from people back home.

The importance of this was stressed by Congressman Eilberg from Philadelphia. He spoke before a bar group a couple of years ago and told us, with respect to lobbying, "When I hear something from the American Bar Association, it's interesting. When I hear from three lawyers in my district, it's important."

I think it's that distinction that we need to bear in mind as we proceed with the lobbying effort.

It is clear that I am not from the Legal Services Corporation. I'm sorry that they are not able to be here, as I am sure you are, but I think perhaps by not being a rperesentative of the Corporation I can provide something in the way of an objective portrayal of where they are on the issue of clinical education and its relationship to legal services.

I really don't know a great deal about it, or didn't until a couple of days ago when I had the benefit of attending the board meeting of the Corporation at which this issue was discussed for about an hour and a half, and several of the members of this audience here participated in that discussion.

I'm sure after I have given my impressions and report on it they will want to make additional comments.

I think it would be helpful by way of background to briefly discuss the Corporation itself and its history and present status because I think its development, particularly in terms of its funding, has had a significant impact on its staff's view with respect to whether or not they should be involved in clinical legal education, and if so at what point.

At the risk of boring many of you who, I am sure, are very familiar with that history, let me just briefly run through it for you.

The Corporation was authorized by Congress in 1974 to be the successor to the OEO Legal Services program. This was largely because of a number of political problems that the OEO program had encountered, particularly under the Nixon years with Howard Phillips and his efforts to basically do away with OEO.

It was during that period that the funding for legal services, the OEO legal services effort, was frozen at a level of $71.5 million for a period of about five years, which had obviously a terribly detrimental effect upon the program. It required the shutting down of several offices, cutting of staff, and really a terrible morale problem.

So the Corporation was authorized by the Congress in 1974. It did not actually get into business until the summer of 1975 when the Board was finally selected and confirmed, so it's been in existence for something under three years at this point.

During that period, it has had considerable success, as I guess you generally know, with obtaining increases in appropriations from Congress. This is largely because it has been able to show that the original congressional mandate of providing legal services to all indigent people simply has not been able to be met thus far, and because the Corporation, I think, has done a good job administering funds and has cut their administrative costs down to something under three percent in terms of home office costs.

As a result of that, the Corporation's budget has grown from $71.5 million to, first, $88 million and then to $125 million and, now, to $205 million during the current fiscal year.

For next year, the Corporation has requested of Congress $304 million, or an increase of $99 million over its current appropriation. The President, in his budget message to Congress, recommended the figure of $225 million; and presumably somewhere in between there Congress will come out, in the next couple of months, with a figure.

The result will be that, as of next year, the Corporation will have a budget which is some three and a half to four times as large as the budget that it had at the time that the Corporation was established by Congress.

It is obviously that substantial growth and that significant amount of funding which, I think, have stimulated a lot of interest in looking to the Corporation as a possible funding source for clinical legal education.

I should also mention to you that the Corporation, this past fall, was re-authorized and is now authorized through fiscal year 1980.

The Corporation, while it's been able to get a lot of funds, has argued two points particularly strongly with Congress in getting those funds.

First of all, they argue that there are large segments of the country in which there are simply no legal services programs of any kind. They estimate that, at the end of the current fiscal year, there will

be some six and a half million people who will be residing in areas which simply have no legal services programs whatsoever.

One of their major priorities, therefore, for the coming year is to expand existing programs and to create new programs in areas where there are currently no programs. Approximately half of the budget increase that they are seeking for next year would go into that effort.

The other issue that they have argued strongly with Congress has been that they need to achieve a minimum level of access to legal services for all poor people, which they have established as two attorneys for 10,000 poor people. They, then, costed that out and came up with a figure of $7 per client as a way of determining how much each program would need for its funding. They have not achieved that level of $7 in all programs and, therefore, another segment of the increase in the budget next year would go into that area.

The last significant area that they are really pushing for in the budget request for next year is an increase in salaries for staff attorneys which, as you know, are really quite low and which have created difficulties, particularly with respect to retention of staff attorneys.

It is from that perspective that the Corporation is very concerned about meeting the needs of getting services out to people who are not yet getting service at all. They have shown reluctance to want to get off into any kind of a delivery system other than that which they know, are familiar with and have used, which is the staff attorney office.

They have not been enthusiastic for that reason and others over suggestions from segments of the bar about Judicare and, obviously, have not been particularly interested in going to law schools with clinical programs.

What is the Corporation doing at present in the clinical area?

They are directly funding two programs - at Antioch Law School, Dean Edgar Cahn's program, and Dean Rivkin's program at the University of Tennessee. As you may know, the Corporation is prohibited by its charter from directly providing services to clients. They have to do it all by grant or contract and, therefore, relationships with all the legal services programs are done by grant or contract.

They only have two grants directly to a law school for clinical legal education arrangements, and those are the two I have mentioned. Those were not initiated by the Corporation. They were programs that were begun under the OEO years and were inherited by the Corporation. The Corporation, itself, has made no new grants to law school clinical programs.

Both of those programs have very substantial full-time staff attorney components, and the Corporation staff made a strong point of that fact in discussing this before the Board - that they view it as essential that any kind of a clinical program, if they get into funding, would have to have a strong staff attorney component that would be capable of carrying on the program when students are not available.

Dean Rivkin's program also is in the situation that it is the exclusive service provider in its geographic area. That is not true, however, in the case of the Antioch program which runs parallel to the existing legal aid office in Washington.

Now, while there are only two programs that are funded directly by the Corporation, the Corporation itself also has gotten into the clinical area somewhat in terms of resource materials - preparation of practice manuals and training materials - primarily for its own new staff attorneys.

That material has been prepared, in some instances, by law school faculty members, including clinicians, and I understand that a number of these materials have been found useful by law schools for their clinical programs. Dick Carter said that there are over 40 law schools that are using some of their "new lawyer" materials in clinical legal education programs.

Apart from the direct efforts of the Corporation, there are a number of arrangements that have been made by local legal aid offices with law schools and with law school clinical education programs. They range all across the boards from situations where the Corporation is paying sums to the law school for faculty to situations where the law school merely has students that go over and work in an existing legal aid office.

It's fairly clear that the Corporation has no real handle on the extent of these arrangements - what exactly they entail, how they are handled. I think the one thing that they definitely ought to be encouraged to do is to try to get some better idea of what's going on in that area.

Now, the real issue that we are here to discuss this morning is what happens next, and will the Corporation get into the clinical legal education field more heavily?

As I indicated, my understanding of this issue is drawn largely from the discussion two days ago. I guess my reaction to it is one of mild optimism, based not on a Damascus experience or shift in the staff view of this issue, but largely on the comments that were made by several of the Board members at the meeting - and, in particular, some of the new members of the Board. Half of the Board was there for the first time on Thursday. It was the first Board meeting they had attended. For your information, the remaining half of the Board is scheduled to have their terms expire this summer, and it may be that we will have an entirely new Board by the fall of this year.

What I will relate to you this morning, then, are comments that were made by people at the meeting, and I give them to you without any particular value judgment on them. Some of them you will find helpful and some of them you may consider to be outrageous, but I just want to report to you what the discussion was.

There are two factors that seem fairly clear. One, that there will be no significant change in the Corporation's position in this regard for fiscal year 1979. That is largely because, first, they have

already made a budget submission to Congress in which there is no indication that there will be any movement in this area. Second, the belief of the Corporation is that they need to move on the priorities of expanding into the new geographic areas and getting up to the minimum access and that these are matters that they want to proceed with without worrying about moving significantly into alternative methods of delivery.

Presuming that the Corporation is able to substantially meet those objectives in fiscal year 1979, then we are looking at fiscal year 1980 and beyond. The Corporation will be beginning to work on its 1980 budget materials almost as soon as the House and Senate have completed their action on this year's budget, or are substantially along with it - which will happen sometime during the summer. During the fall of this year the Corporation will begin sitting down and trying to come up with budget figures for the subsequent year.

The other point that I think has to be borne in mind in the discussion is the emphasis on provision of services as the justification for the Corporation getting involved in this area at all.

It was quite clear that their mandate from Congress is to provide services to poor people and, insofar as a clinical program may provide such services and do so on a cost-effective, sound basis which makes it attractive as against a staff office, that's their justification for getting in there. Absent those kinds of factors, they would have no interest at all in moving into the clinical field.

Now, there were a number of points that were raised by one or more individuals, and I would pass these on to you. As I say, I am really serving to report these to you and am not offering any value judgment on them.

It is clear that the Corporation staff, at least, feels very much more comfortable at this point with the idea that the local programs would make arrangements with the law schools, rather than the national Corporation making direct grants.

It is also clear, I think, that several Board members are willing to go well beyond that, but the Corporation staff discussed it in terms of, if we have an existing program in that area, does it make good sense for us to set up another program which would be in competition with or in duplication of the existing program. Perhaps in a case where there is no program at present, it would make sense to give every consideration to a clinical program which might apply for a grant to be a service provider in that area.

There are examples in New York and Los Angeles of arrangements that have been worked out between these offices and the law schools which were cited as examples of the kinds of things that could happen.

Now, there was an interesting presentation by the Temple University Law School Clinic and Joe Harbaugh about their situation and the fact that they have attempted to get funds both directly from the Corporation and also from the local program. They are providing, Joe reported, legal services for up to 3,500 clients in a year. That program is funded entirely by the law school. They have been totally unsuccessful in

trying to get any funds from the Philadelphia Legal Aid Society.

There was some question raised by one of the new board members about whether, possibly, the Corporation would consider interceding in that situation - going to Philadelphia and sitting down with the parties and trying to see if they couldn't work something out. The Corporation staff expressed some discomfort about doing that kind of thing, but didn't say they would refuse to.

There are some obvious benefits that the Legal Services Corporation can derive from going the clinical legal education route. Obviously, the first one is the provision of services, and to the degree that the costs are shared by the law schools and the legal services program the costs for the service may end up being very competitive or, perhaps, even cheaper than they could provide through their own staffed offices, although no one really knows.

But another factor is in the training in the handling of poverty law matters of students who may ultimately become legal services attorneys. Obviously, any training that is done by the law schools in that regard gives the Corporation, when they hire somebody, a person who is better prepared, more ready to go, and it saves them from having to do the training themselves.

That is not a justification, however, which can stand on its own. One of the board members made the point that, obviously, the clinical program trains a great number of other people who will never set foot in a poverty law office or, indeed, do poverty law work; and that it may not be a sound investment for the Corporation to consider funding training, as such. The statistics that were cited yesterday by Junius Allison about the survey of the people who had gone through the Vanderbilt clinical experience indicated that, I think, 14 out of some 300 students who had gone through that program ended up in legal services programs, which is not, obviously, a terribly high percentage.

On the plus side, in addition to the training aspect and the service aspect, it is obviously desirable from the Corporation's standpoint to have members of the profession - even through they do not go into legal aid work - who are sensitized to the problems in this area, and who may take pro bono cases while in private practice, or people who will simply be supportive of the legal services concept, both locally and in terms of funding nationally.

The issue of quality control was raised by people on both sides. The Legal Services Corporation staff people expressed the view that a program, a clinical program that is strongly oriented towards service - it has been their experience that those programs do provide at least comparable quality to a staff attorney program.

They are concerned, however, that some of the law school programs are not as committed to the service element, and that the quality may suffer in those situations.

There was some expression that programs which did not involve students working on a substantially full-time basis perhaps would suffer more in the area of quality because students would have other concerns

which would mitigate their ability to concentrate on the cases.

Two of the new Board members expressed the feeling that joint efforts between law schools and the program would provide a healthy degree of cross-fertilization and new input, rather than a closed situation.

They also expressed the view that the legal services movement for its own political purposes needs to strengthen its constituencies and that if it reaches out to their institutions and provides funds to clinical programs at law schools and other institutions, it will be developing constituencies which will be supportive of the overall efforts. It makes sound political sense for them to do that.

The Temple Law School Clinic situation cited a point which might be used as a justification for having the funding of clinical service in a law school where you already have an existing legal aid office -- that is, in the handling of conflict of interest situations, which is a constant problem in the legal services field. It's been on the agenda of the Board of Directors of the Corporation for the last two meetings.

Obviously, the most common kind of situation is not the most terribly difficult one to handle - the divorce case where both sides are poor. You represent the wife. The husband needs an attorney. And the Corporation has a variety of farm-out methods. But it is certainly a situation where a clinical program in a law school could provide a good service to the Corporation in handling those cases.

There was concern expressed that the growth of the Legal Services Corporation, its rise to prominence, and its increase in funding has caused a drying up of funds from other sources for legal services programs, including clinical ones at a law school. Again, in the Philadelphia situation, United Way used to provide some of the funding. They made an agreement with the legal services program there about five years ago that they were going to phase out that support, since the Federal dollars were starting to come in - and, indeed, they have phased it out.

Perhaps if the other sources of funding are, indeed, drying up, there is some obligation on the part of the Corporation, and it's to their benefit, to provide funds to offices which are providing legal services which, otherwise, they would have to provide.

Tom Ehrlich expressed the view at one point that if the Corporation begins to provide funding to law schools for clinical programs, the schools should be expected not only to provide students to render legal services, but should also provide other significant evidences of commitment to such efforts, including providing back-up research for the program, and should make an effort to integrate poverty law matters into the curriculum not as a separate course item, but try to integrate it into all of the courses in the law school.

A representative of the client community who was at the meeting noted that problems of access to legal services are particularly acute now in rural areas, and that - by and large - most law schools are not located in those areas, and that it may be difficult for law schools to provide the services with a large student component in a widespread rural area.

Also, the client representative raised the question - which none of the people at the meeting seemed to think was a particular problem - about whether a law school, in order to be a recipient of grant funds from the Corporation, would be able to provide the independent governing board that is required under the Legal Services Corporation Act. The local board must include one-third representation from eligible clients and the question was raised whether the law schools would have a difficult time dealing with that problem in letting it go to an independent board of that kind.

Those are the issues that were discussed at the meeting. As indicated, a number of people - Joe Harbaugh, Millard Ruud, Edgar Cahn, and perhaps others - were all at that discussion and I am sure that they, later on, will provide you with their impressions and views also.

CURRENT COSTS OF CLINICAL LEGAL EDUCATION -- A PROJECTION OF NATIONAL NEEDS

James P. White
Professor of Law
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Consultant to the ABA on Legal Education

About two years ago a section on clinical legal education was added to the annual questionnaire. I believe that the addition of this new section on clinical education is a demonstrable recognition that clinical legal education has become a very important part of the total cost of legal education. The Consultant's office received a grant from CLEPR for the initial project. The deans in the audience and many other people have seen the data which was produced as a result of the 1976 questionnaire. I believe that it is the variety of data analysis which is useful to law schools as they engage in planning for the future.

We now have some additional data relating to the 1977 questionnaire. This data has not been distributed in any detail to the dean of each ABA approved law school, but will be disseminated sometime in the near future. We also have other information which we will begin the process of disseminating to each of the law schools approved by the American Bar Association.

We have tabulated some material on the variety of clinical programs, hours of credit, whether the programs are in-house or extern and their student size. This data is compiled from information supplied by the dean of each ABA approved law school in the 1977 annual questionnaire submission. I wish first to compare some data using statistics from the fall 1976 and 1977 questionnaires and then say a word or two about what I see as some projections about the cost of clinical legal education.

The average number of instructors, and bear in mind this is not terribly meaningful because the range is from a law school with a relatively small student body to a law school with a large student body who devote all of their instructional time to clinical programs, both in 1976 and 1977 is two persons holding full-time academic appointment. Again, on the average, three full-time members of the faculty devoted part of their time, that is essentially supervised one clinical program, in both 1976 and 1977.

In 1976 as an average, there were three part-time teachers in each law school approved by the American Bar Association. The average number of part-time clinical professors increased to four in 1977. However, there was a decrease in clinical instructors from an average of three in 1976 to two in 1977. Thus there appears to be some movement in law school appointments from that of clinical instructor to that of an adjunct part-time professor.

A relatively massive amount of money has been put in clinical education the past several years. To assess what impact this infusion of funds has had on the required curricula, we might look at the average number of credit hours in clinical education now required as part of the J.D. program.

In 1976 an average of 3.5 (3-1/2) credit hours were required for a J.D. degree. In 1977 the average of all 163 approved schools offering J.D. degrees required 4-3/4 credit hours, an increase of 1-1/4 credit hour. Thus in the time span of only one year, there was, in a relative sense, a significant increase in the total number of clinical credits required for graduation from an approved law school. It is my view that this is a particularly significant figure in view of the diminution of CLEPR and other "soft" money for the funding of law school clinical programs.

This data leads me to believe that in a time of increasingly scarce resources for legal education, a significant number of law schools have seen fit to allocate a significant infusion of funds into clinical legal education. As Peter has mentioned, the average amount of law school resources has not substantially changed. The change has only been in proportion to the nominal cost-of-living increase in the law school budget, and the amount of university resources and outside money has changed only again in proportion to a nominal cost-of-living increase.

There appears to be a substantial decrease in clinical placements and a somewhat corresponding increase in law school directed and supervised programs. Thus those programs where the law student is sent out and supervised by another agency or individual have decreased, and those programs over which the law school has much more direct control have increased. This may reflect several phenomena. It may show student self-selection or it may show the fact that law faculties believe that a clinical program must have strong faculty direction and supervision if it is to be a reliable component of a law school's academic program. My personal view is that quality clinical programs must have strong faculty direction and supervision if they are to be a reliable component of an effective law school academic program.

Let me say a word about the concerns of the Council of the Section of Legal Education of the ABA. First, what will happen when CLEPR ends? If you will recall in pre-Pincus days, the Ford Foundation put a good deal of money into international legal studies. International legal studies flourished somewhat briefly in a number of law schools in the United States, but died out once the infusion of outside resources ended. An exception, of course, was those few schools that had enough resources to continue the program or had a strong goal or mission related to international legal studies. Is this going to happen to clinical programs also?

I think not. I think the clinical programs have captured the imagination of many people and are here to stay. However, the climate in which they are going to exist is one in which higher education is receiving less public support, both for private or public institutions, than it has received in the past.

The baby boom is hitting the freshman undergraduate level between 1978 and 1980, and it will then peak. Thus in the 1980's it appears there will be a smaller pool of college graduates who might seek admission to law school. Legal education itself seems to have peaked. Total enrollment in ABA approved law schools has increased less than one percent per year from 1975 to 1976 to 1977. There is no indication that there is going to be any great surge forward in enrollment in the future unlike our experience of the early 1970's.

Thus, we shall have fewer resources for higher education, and also a corresponding leveling of enrollment. The question we might ask is where, in the face of stabilized enrollments and greater competition for adequate funding of all components of higher education, including both public or private, are the resources to be found?

I believe that there are several possibilities. I would hope that law school budgets might continue to improve more dramatically than would general university budgets. It is my belief that in the 1950's and early 1960's, a period of peak public love and support of higher education, law schools were not supported to any greater degree, and often to a poorer degree than were other units of the university. In the past two or three years we have seen more movement in law school resource commitment, in a proportional sense, than we observed during the preceding decade. Through the accreditation process, both the American Bar Association and the Association of American Law Schools are attempting to do what can be done to assist law schools to secure necessary funds to permit the continued development of an entire variety of programs including clinical programs. Increased funding for legal education by the parent institution then is a source for continued funding of legal education.

The second source, I would hope, exists within the private sector where there are a number of persons, not necessarily foundations, but public spirited individuals and corporations who might be willing to contribute some funds to the growth and development of a quality legal eduation program including clinical educations programs of high quality. I believe that the private sector should give greater support to high quality small student clinical legal education programs which are directed by full-time law school faculty members, have a substantial academic component and really provide the student a meaningful clinical experience.

And thirdly is the hope of funding through the Federal Government. Our hope that Title XI, for which funding now is authorized, can continue to be a future source of high quality clinical legal education. I think it's unrealistic to think that there will be a huge amount of funding available through the Federal Government for clinical legal education and I suspect we would be wrong to hope that there will be large amounts, as in medical and dental education, where you now see a substantial decrease in capitation grants. So I think we should not rely on federal monies to an undue degree. But I would hope that federal monies will provide some modicum of resources to support the law school clinical experience.

I would hope that these three sources, the university itself, and the private sector through a variety of ways, and the Federal Government might join in a triad to continue to fund and assist in the development of high quality clinical education as a meaningful component of contemporary American legal education.

CURRENT COSTS OF CLINICAL LEGAL EDUCATION -- A PROJECTION OF NATIONAL NEEDS

Peter deL. Swords
Assistant Dean of Law
Columbia University

In 1972 when I left Bill Pincus at CLEPR and my direct involvement with clinical education, I joined the Administrative Staff at the Columbia Law School and have struggled unsuccessfully ever since to keep the elevators at 116th Street and Amsterdam running. I also joined Frank Walwer in an investigation of the fiscal aspects of legal education and we have been going at it ever since for over six years now. Our work involves detailed statistics that I am afraid fascinate only us and bore the remainder of the law school world. We have delivered our findings fairly regularly to the Deans at their annual workshop held at the A.B.A. mid-winter meeting and over time they have become inured to our quantitive minutiae. Today I happily return to the clinical fold, dragooned by my good friend Jim White to assist on this panel, and will give you a very brief taste of our numerical dish. It is a very acquired taste I am afraid.

In the spring of 1974 Jim White, Millard Ruud, Ken Pye, Frank and I met and began work on expanding the annual questionnaire submitted each year to all approved law schools in order to collect information and make reports about them. We added questions to develop fiscal data and more program data. With the help of a grant from CLEPR in 1976, we added a section on clinical legal education. Today I will report on our examination of last year's Fall 1976 questionnaires. While we collected much data on such things as numbers of clinical courses given by type, number of student hours taken in clinical courses, number of people teaching clinically and the like, I will restrict my report to the fiscal side of things. More particularly, 131 schools reported the amounts they budgeted for clinical education broken down into three categories: first, instructional costs - i.e., compensation paid to teachers; second, non-instructional personnel costs, i.e., compensation paid to secretaries or non-supervising attorneys; and three, non-personnel expenses, i.e., duplicating, telephone, and similar office expenses.

OK, here goes. The only thing I can suggest to help is that you might jot some of these figures down as I speel them off. I'll try to go slow.

For the 131 schools which reported, the average amount budgeted for clinical legal education programs last year was $124,000, the median amount about $103,000. This average amount constitutes about 8% of last year's average law school total direct cost budget of slightly under one million six.

Averages and medians obscure, of course, the tremendous range of differing amounts budgeted for clinical programs from a low of $8,000 at one school to over one-half million at another. Average-type figures also obscure that schools have vastly different enrollments.

Of the 42 schools reporting last year with enrollments between 185 and 498, the average amount budgeted for clinical was $73,000, the median about $56,000. Most of these schools were distributed evenly between $20,000 and $100,000. The average amount budgeted for clinical for these schools constituted about 7% of the average total direct costs budget (of about $1,070,000).

Of the 40 schools reporting last year with enrollments between 500 and 698, the average amount budgeted for clinical was about $120,000, the median $100,000. Most of these schools were distributed evenly between $25,000 and $200,000 with a moderate concentration in the range of $70,000 to $120,000. The average amount budgeted for clinical for these schools constituted about 7½% of their average total direct costs budget (of about $1,586,000).

Finally, of the 49 schools reporting last year with enrollments between 700 and 1800, the average amount budgeted for clinical was about $220,000, the median $163,000. These schools stretch out fairly evenly from $16,000 to over one-half million with a slight concentration between $50,000 and $150,000. The average amount budgeted for clinical for these schools constitutes about 10% of their average total direct cost budget (of about $2,270,000).

Not surprisingly, the biggest portion budgeted for clinical education is for instructional costs -- as an average matter about 70% of the total clinical budget was for instructional costs last year. Over 80% of the schools reporting budgeted between 60% and 100% for instructional.

Non-instructional personnel costs was the second largest category with the average amount being about 20%. Finally, as an average matter about 10% was budgeted for non-personnel expenses.

We have not yet begun a systematic review of this year's Fall 1977 questionnaire. I have, however, taken a look at a sample of about 15 schools, and while there are wide differences, the average increase in the total amount budgeted for clinical between 1976 and 1977 was about 11%, an amount not suprisingly equivalent to the average increase in total direct costs (based on a much larger sample).

That concludes my prepared remarks. I would like to say one other thing in connection with something Bill Pincus mentioned. I calculate that on the basis of these 131 schools that more than $16 million dollars was spent last year.

Bill, I think you were referring to the whole 10 year period, so I think the law school involvement in monetary terms is far greater than perhaps you were aware. If you assume that we are now spending $15 million a year on clinical, and Bill mentions a figure of $50,000,000 for the next five to ten years, that would only increase the amounts budgeted for clinical each year by about 50 percent.

That's just on a five year basis, and I don't believe that's enough to go from a few clinical courses to the clinical curriculum. I think the needs in the future are really quite massive and this meeting is very well chosen.

FEDERAL SUPPORT FOR PROFESSIONAL EDUCATION: CLINICAL LEGAL EDUCATION AND THE PROMOTION OF NATIONAL GOALS

Dean Hill Rivkin
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Over the years, the federal government has invested hundreds of millions of dollars in educational institutions that train people for the public professions. My remarks consider the underlying themes and premises of the national government's efforts in the area of professional education, with emphasis on one major profession that significantly employs clinical methods of teaching and learning: education in the health professions. My main thesis is that federal funding of clinical legal education is consistent with the goals and purposes that have motivated the federal government in the past to fund educational enterprises in professional education.

I. An Overview of Federal Support for Professional Education: Roles and Goals

Professional education means many things to many people. Some view professional education as the best method for equipping students with a sufficient base of knowledge to allow them to perform competently the tasks of the profession. Others stress the role of professional education as a socialization tool, inculcating the norms, attitudes, and beliefs of their chosen work into budding professionals. Still others see professional education as a desirable mechanism for selecting out of the profession those individuals who -- under the profession's own standards -- are not suitable. Finally, some view institutions of professional education as a resource benefiting the community and the society and as a critical mass for new ideas and methods.

These views of the functions of professional education are not exhaustive, but they serve to highlight the often difficult and delicate tasks that professional schools face in defining their role -- in society, in the profession, in the university, and in the community. Not surprisingly, in recent years professional schools have come under increasingly critical scrutiny -- from within and without -- and have been impelled to re-evaluate their goals and objectives in keeping with the rapidly changing -- and often conflicting -- standards of the day. A complete examination of the sources of discontent within professional education is beyond the scope of this paper, but I think it is fair to say that criticism of professional schools has risen in direct proportion to criticism leveled at the professions in general. This criticism, in large part, has focused on serious shortcomings in the way professions regard their obligations to their clients and the public.

One important source of the efforts to reform the professions has been the federal government, which has acted in at least two important ways -- through the carrot and through the stick -- to induce the professions to change many of their most entrenched policies and practices. The stick approach has been through direct action: law suits, threats

of law suits, administration complaints, and the like. Members of this audience who belong to the American Bar Association undoubtedly know what role the federal government has played in compelling the Association to reassess many practices that, for years, were thought to be matters within the exclusive province of the profession.

The carrot has been in the form of federal funding for professional education. Perhaps the best case in point is the funding of education for health professionals. Prior to 1960, the federal government had provided what has been termed "insignificant" support -- twenty four million dollars per year -- for the education of health professionals (which include physicians, nurses, osteopaths, dentists, optometrists, pharmacists, podiatrists, and veterinarians). During the 1960's this sum increased steadily so that by 1969, the federal government was spending approximately 54 million dollars on educational initiatives in these professions. The primary reason for this stepped-up funding rested on the documented perception that the nation was experiencing a shortage of health professionals and that professional schools were financially unable to educate more students without stable federal funding. In short, the federal government and health educators were agreed that academic institutions involved in health education were a national resource training professionals in a variety of educational settings to meet the needs of the nation for quality health care.

In 1971, basic institutional support from the federal government to health professional schools more than tripled to a figure close to 200 million dollars. This increase was based in large part on conclusions reached in a report published by the Carnegie Commission on Higher Education that advocated further increases in the number of health professionals, particularly in areas with severe shortages of qualified health personnal. The trend of spiraling federal funding has continued to the present. By providing massive infusions of funds, the federal government, seeking to further its central objective of providing greater access to quality health care, urged the creation of new education programs designed not only to increase the supply of health personnal but also to correct the geographic maldistribution of health professionals. The schools responded with such programs as remote site training, which placed students in supervised practice settings away from the main institution. Another objective of federal funding, encouraging more health professionals to enter the primary specialties of family practice, general internal medicine, general pediatrics, and obstetrics and gynecology, also generated increased educational opportunities. Here, schools established and expanded educational programs in the targeted fields. Family practice departments, for example, flourished. Still another objective underlying federal support was to swell the ranks of mid-level health personnel -- physician assistants, nurse practitioners, dental auxiliaries, and others. Here, too, the schools developed new educational programs and projects. In 1977, federal funding for education in the health professions remained in the hundreds of millions of dollars, and, although there are efforts underway to reduce this level because, it is thought, the present number of health personnal is adequate to meet national needs, little doubt remains that funding will continue in most health fields at substantial levels.

This thumbnail sketch illustrates some of the important national goals furthered through federal support to education in the health pro-

fessions, a field in which clinical teaching has long been an integral -- if not dominant -- part of the curriculum. A similar history of federal funding -- though not necessarily of the same magnitude -- could be recounted for professional education in such fields as social work, clinical psychology, and general education, all of which rely on the clinical method of instruction to varying degrees in their overall curriculum. In these fields, federal support also has followed a pattern of encouraging increased access to and improvements in the quality of the services provided by the respective professions. In the field of education, funds were also allocated to endeavors seeking to develop new teaching and learning methods for professionals.

It is against this background that the merit of funding clinical legal education under Title XI must be measured. Judging from the experience of other professions, the criteria for determining whether an educational institution qualifies as a national resource are rather broad; fundamentally, they relate to the potential ability of the educational program to enhance the quality of and access to a professional service rendered to the public at large. The remainder of this paper will explore the functions and purposes of clinical legal education and the national goals promoted by these courses and programs.

II. Clinical Legal Education: Purposes and Possibilities

Like most other professional institutions, law schools have attempted to incorporate into their curriculum courses that are responsive to the changing needs and demands of society and the evolving categories of knowledge that define a particular era. Although the antecedents of clinical legal education can be traced back as far as the early part of this century, it was not until the 1960's that clinical legal education began to emerge as a distinctive subject matter and methodology in American law schools. The reasons for this emergency are complex but are certainly tied to the turbulent social history of that decade, a time when students -- even law students -- began to question many of the assumptions and premises of institutions that directly affected their lives. Law schools responded to this renewed social purpose by offering new substantive courses -- many under the rubric Poverty Law -- and starting clinical programs that allowed law students to employ their newly acquired substantive knowledge in a practice setting, usually in the representation of low-income clients.

At first, many clinical programs neglected to concentrate on the teaching and learning dynamics at the core of clinical courses. Supervision of students often was unfocused, and the value of the course largely depended on the ability of the individual student to make sense of a complex legal system composed of a variety of rules and roles normally not considered in non-clinical courses. The upshot of this formative phase of clinical legal education was that clinical courses received a mixed reception in many law schools. Clinical courses were often perceived as an unstructured, undemanding block of time offered mainly to appease the social consciences of many students and to mollify the impatience that characteristically sets in at the terminal phases of law school education, a phenomenon common to many professional fields.

As with any new important subject, changes and improvements occurred rapidly, stimulated by the efforts and funding of the Council on Legal

Education for Professional Responsibility (CLEPR) and a core of professors who began to flesh in the outlines of this promising subject matter and pedagogical method. The major objectives of their endeavors were two-fold: (1) to develop theories and models of lawyering tasks and processes; and (2) to forge a teaching methodology that would allow students to make critical sense of their experiences in the field -- of the roles, rule, institutions, and people they confronted in legal representation through clinical courses. Ideally, theorists of clinical education seek the illusive connection between thought and action and theory and practice.

What has developed in clinical legal education over ten short years holds the modest promise for effecting fundamental long-run changes in legal education, the legal profession, and our system of justice. Five major objectives are promoted through clinical law courses:

1. Clinical legal education introduces the future lawyer to the importance of two processes that have long been neglected in professional education: learning to learn and collaboration;

2. Clinical legal education is a superior method for teaching concepts of professional responsibility to young lawyers;

3. Clinical legal education provides new vistas for research into lawyering, the legal profession, and the legal system.

4. Clinical legal education assists students in cultivating advocacy skills; and

5. Clinical legal education supplies competent legal representation to a variety of individuals and groups who otherwise would not have full access to the legal system.

These objectives are elaborated below:

A. Exploring the Frontiers of Teaching and Learning. Although the clinical method is the dominant form of instruction in many professional schools, there is a surprising lack of sophistication about its pedagogical underpinnings. In many disciplines, teaching and learning in a clinical setting often occur almost haphazardly, and "exposure" is often assumed to lead to understanding. Recognizing the dearth of comprehensible theories involving learning from experience, clinical legal educators have begun to develop their own models of instruction to guide the teaching/learning process. The chief foxus of these efforts is to assist students in learning to learn, a faculty that presumably will remain with the student long after he or she forgets many of the rules and statutory schemes parsed in the classroom. The importance of incorporating this objective into professional education has been recognized by many who have critically examined modern professional education. One, Edgar Schein, an organizational psychologist at M.I.T., recently observed:

> "In order to make a smooth transition into practice and to avoid obsolescence, professional education must emphasize 'learning to learn'. Most professional

> curricula are only now beginning to recognize the importance of developing an approach to learning which will ermit the graduate to continue to learn on his own after he leaves school. Without adequate opportunities to gain self-awarness, the student cannot learn how to diagnose his own or others' needs except in a mechanistic manner; nor will he be able to take into account his own biases in applying his professional skills."

Clinical legal education, by analyzing the dynamics of learning in a practice seeting, often on a one-to-one basis, alerts many students, at an early stage in their professional careers, to the value of reflection on and generalization about their lawyering experiences. Many will carry away from law school a coherent method of learing from colleagues and supervisors that will ensure that as experience grows so will understanding.

In its examination of the meanings and assumptions of lawyers' behavior in the legal system, clinical legal education also confronts one of the crucial challenges facing all professionals in our advancing technological society, namely, the need to develop new modesof collaborative behavior necessary to solve the polycentric problems common to our day. Lawyers, as always, will play an important role in devising solutions to the bewildering number of disputes in our society. Given the complexity of modern problems, the hired-gun ethic of lawyering, under which lawyers to maximize the interest of their clients through a variety of adversarial techniques and strategies, seems peculiarly inappropriate. Strategies on adversariness certainly will continue to have their place in most disputes, but modern lawyers must develop new modes of problem-solving and decision-making if they are to remain effective in the new roles they must assume in our post-industrial world.

Two examples will help illustrate this point. Modern public law litigation -- prison cases, environmental cases, mental health cases, to name a few -- which focuses on the solution of complex institutional and social problems often thrusts lawyers and judges into familar roles as administrators, bargainers, and facilitators. Successfully administering a complex injunction in a public law case, for example, cannot be accomplished if lawyers insist on adhering to old adversarial norms. Similarly, in the growing body of disputes often heard in the lower courts -- domestic, juvenile petty criminal -- the role of lawyers and the effectiveness of adversarial behavior is being seriously questioned. New models of dispute resolution, in which lawyers inevitably will be involved, are already being utilized.

In these new settings, where there is no zero-sum pie to divide, lawyers will come to recognize that new forms of behavior will best further their own interests and the interest of their clients. Yet we are only at the beginning stages of understanding the nature and consequences of these modes of behavior. Clinical legal education, with its emphasis on the quality of lawyer behavior, is well suited to the task of introducing new models of interaction into legal education and the legal profession. Over time, the potential benefits to the profession and society of a new generation of lawyers, sensitive to the impact and ramifications of their behavior and seeking new ways to solve society's problems, could be well worth the modest investment in clinical education proposed today.

B. Teaching Professional Responsibility. For a variety of social, cultural, and political reasons that undoubtedly go well beyond the complicity of so many lawyers in Watergate, there has been an upsurge of interest in the teaching of professional responsibility. This focus on the ethical dimension of lawyering is a healthy indication that a new era of dialogue between practitioners and law teachers and students will begin, logically led by clinical teachers whose concern for understanding the professional obligations of lawyers go well beyond the often linear intellectualizing of the traditional classroom.

In supervising students in the field, clinical teachers are frequently confronted with ethical dilemmas that text books -- no matter how brilliant -- are incapable of capturing. For example, what are the nature, causes, and consequences of the strong pressures toward routinization of lawyer work? What impact do such pressures have on lawyers? Clients? Others? What are the ethical implications of a system of criminal justice that -- at least at its lower levels -- subverts many of the formal safeguards that defendants, in theory, are entitled to? How aggressive should a lawyer act in certain settings? Faced with these and a host of other situations, students, often for the first time in their educational career, must understand and live with the consequences of decisions that affect others. The tensions generated in students when they assume the roles of attorney, surrogate, friend, or helper can be harnessed and harmonized by clinical teachers, who are experts in observing and interpreting the world of law practice and placing the many ethical quandries students and lawyers face into intelligible frameworks.

It is still too early to predict what will emerge from our attempts to study and teach concepts of professional responsibility in a clinical setting. Our goal is to train young lawyers to be more attuned to the pervasiveness of ethical and moral questions in law practice and better able to understand the conflict between the rational and emotional elements of their own behavior and its impact on others. Whether or not we fully achieve this goal, educating students to be good lawyers and good humans will remain a vital part of our work.

C. Researching Lawyering, Litigation, and the Future of Law Practice. Professors Probert's and Rudder's articles notwithstanding, it may come as a surprise to some that so little is known about what lawyers -- or, for that matter, other participants in our legal system -- actually do in practice. True, there is the Code of Professional Responsibility -- a scheme of conduct by lawyers for lawyers -- and a host of books by lawyers discussing their lives in the law, but only in recent years have researchers undertaken the difficult task of empirically determining whether the legal profession practices what it preaches. This research has taken a variety of forms: extensive questionnaires, in-depth interviews, systematic review of cases and case files, and participant-observation, to name some of the most common research methods. Why is there such interest in putting lawyers' work and litigation under the microscope and how do clinical teachers contribute to this mission?

First, an understanding of the ways lawyers behave and practice will allow the profession and the public together to develop standards of performance and evaluation that will, among other functions, serve as an informed basis for improving the delivery of legal services to all segments

of our population. This task, though controversial, is being pursued in commendable fashion by groups such as the American Bar Association Commission to Formulate Model Lawyer Peer Review Standards and by the Federal Legal Services Corporation.

Second, research into the nature, function, and role of litigation holds the promise of informing responsible government officials and the public of the major structural inadequacies in the legal system that inhibit realization of the goal of equal and impartial justice. We need to know, for example, far more about the roles that class, race, and sex play in our legal system. Hard research and conceptualizing about questions such as these have begun in earnest only in the last few years, and the results have been promising. Marc Galanter's work, "Why the 'Haves?' Come Out Ahead: Speculations on the Limits of Legal Change," to name one of the best pieces, demonstrates the need for further development of micro and macro frameworks to explain, describe, and analyze litigation.

Clinical law teachers, because of their immersion in the dynamics of litigation and lawyers' work, have a responsibility -- to their students, to the university, and to the profession -- to interpret and analyze the welter of cases handled and experiences faced in clinical programs. As skilled participant-observers in the legal system, clinical teachers are in a unique position to collect data and test hypotheses about lawyering and litigation. Gary Bellow's path-breaking work in discerning common patterns in the work of legal services lawyers -- such as routine processing of cases, low client autonomy, narrow definition of client concerns, and inadequate outcomes -- and formulating prescriptions for improving the quality of advocacy in these programs is an outstanding example of the potential research possibilities open to clinical teachers. As clinical law teachers proceed with projects such as these, we realize that the more we learn, the less we know about questions of justice and fairness in our legal system.

D. Training in Advocacy Skills. No matter where one comes out on the current debate over the quality of advocacy in our legal system, there is uniform consensus that training in advocacy skills is an area that could benefit from systematic and creative thinking. We know that skills can be imparted at a variety of levels. Through rote drill, over a long enough period of time, most students will acquire a certain facility in argument or examination. But for most clinical law teachers the role of Hessian drill master conflicts with a teaching role that embodies broader pedagogical responsibilities. Thus, even skills training, often snubbed by our non-clinical colleagues, involves stages of awareness -- for both teacher and student -- that go well beyond the mundane conceptions of the past.

Done well, training in advocacy skills can equip a student with a lasting ability to critique his or her own performances and the performances of others. It can provide students with a common vocabulary for discussing lawyering skills and a method for providing feedback that is constructive and genuinely helpful. It can replace bald generalities -- "Gee, you did real well with that witness" or "That was a terrific argument" -- with careful, informed criticism grounded in the data of a lawyer's performance.

Skills training on this level in law school, while not promising to produce polished practitioners, will provide students with explanatory models of the various tasks and processes that lawyers engage in. In practice, students may deepen, modify, or reject these models; but, at a

minimum, they will supply alternative frameworks for young lawyers to use, whether they are solo practitioners or associates in large law firms. In the end, we may find that quality is not so elusive a concept as we have been led to believe.

The tangible outcomes for the legal system of law school training in advocacy skills are already being recognized. In a preliminary draft, to be released to the Judicial Conference next week, of the Final Report of the Subcommittee on Rules for Limited Admission to Practice of Law Students of the Devitt Committee, the connection between clinical teaching of litigation skills and the quality of practice in the federal court is sharply drawn:

> "The practical education of law students in providing competent legal services to clients is the principal objective of this Rule. Such practical education should increase the capability of the Federal Trial Bar by encouraging the best and most practical training of law students at the earliest possible time.
>
> ****
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> " The choice is to have law students making mistakes under the close eye of a responsible supervisor, or to have fledgling lawyers making the same mistakes later, usually without any or with inadequate supervision."

If clinical legal education can make a modest contribution to the better functioning of our courts, it would further a national goal whose importance is only beginning to be perceived.

E. Providing Competent Legal Representation to the Un- and Under-represented. Leaving aside the functions of clinical education already discussed, law school clinical programs must qualify as a national resource simply in recognition of the wide variety of clients and groups such programs represent. Law school clinical programs, which by one estimate represent close to 400,000 clients annually, are often important resources in their communities, serving as centers where individuals or groups go when they are unable to obtain legal advice or representation elsewhere. Many law school clinical programs work hand-in-hand with offices funded by the Federal Legal Services Corporation. Others are affiliated with many of the rapidly emerging mechanisms -- such as group legal services and proposed neighborhood law centers -- designed to provide quality legal services to a wide array of poor and middle income groups. Clinical programs also receive appointments from federal state, and local courts in a range of pro se litigation, and the known results have been outstanding, with major reforms not uncommon.

The participation of law students in cases involving the poor or in a broader category of public interest litigation can help heighten even the most obtuse student's perceptions of the all too many inequities and contradictions found in our legal system. While we know much too little about the role law schools play in transmitting ideology, it is safe to say that, thanks in part to their participation in clinical courses, many students pursue careers in legal services, public interest law, or alternative programs for delivering legal services. Many others carry their insights into private practice where they have been at the forefront of efforts to expand the participation of the private bar in public representation efforts. A handful even become clinical law teachers.

CONCLUSION

I have attempted to show that stable federal funding of clinical legal education can benefit national goals relating to the delivery and quality of legal services, can improve the functioning of our system of justice, will enable individuals and groups to secure access to lawyers and the courts, and will contribute to the development of professional education across the board by developing new models of teaching and learning from experience. To the extent that money is an obstacle to accomplishing these goals, and it often is, the federal government has an important role to play.

CONVERTING THE SUPPORT FOR CLINICAL EDUCATION FROM SOFT TO HARD MONEY

John R. Kramer
Associate Dean and Professor of Law
Georgetown University

I come to you this morning wearing two hats. Let me describe my other hat because I want to focus on that a little before I get to the soft to hard money issue.

I am not only Associate Dean at Georgetown, but also Special Counsel of the House Agriculture Committee and Counsel for the Welfare Reform Subcommittee of the House. For the past ten or twelve years, my major function in life -- beside teaching law students -- has been persuading Congressmen to provide aid on behalf of poor people.

Dean Edgar Cahn of Antioch worked with me in creating the Hunger Lobby way back in 1967, and we moved food programs from approximately $400 million a year in appropriations when we began to nearly $9.8 billion this year.

That is how easy it is to do it when you do it the right way.

For about eight to ten years, we have sat on our collective asses in law school clinical education in not dealing with the Congress of the United States. It really was only a spur of the moment thing, in December 1976, that ultimately brings us here today. Title XI is the primary if not the exclusive focus of this conference, and we have all acted rather inappropriately.

It is time to get our act together and do something meaningful about dealing with the Congress.

We started out on the wrong foot last year and I want to focus on that and tie it in with the hard core/soft core problem.

A great deal of the theme that I have heard -- and I haven't been here all the time, I got a little snowbound early on yesterday -- has been a sense of beleaguered defensiveness against all of the institutions to whom we look for money.

Uncle Sam doesn't love us. All he's giving us is a million dollars for only one year. If that's all he's going to give us, he can have it back.

The ABA doesn't love us. They only give us moral support, but the minute we reach out for a dime -- like Lester Brickman pointed out -- they slap our hand.

The law schools don't love us. The only question they ask is, "Where's your next article?" not "How many students are you training to be competent attorneys?" and "How are you changing the legal delivery system?"

Well, as part of that beleaguered defensiveness, we are never quite sure who's coming at us with what club, and we get confused as to what audience we are dealing with when we ask for things.

Like the story about the elephant -- a man grabs the tail and another the trunk and a third a leg -- we have to know who's feeling us when we're talking to them.

One of our problems with Congress is the way we dealt with them last year, the way we made our pitch. The issue that we posed to Congress was that we needed this money to improve legal education. That was our primary focus, our primary thrust. The head of the AALS wanted to make that the key point of his testimony and, to the extent that law deans rather than clinicians did the lobbying, that was the focus.

Let me read you from our testimony, part 3, page 4 - by that time whatever Senators or Congressmen were left in the room, which was probably very few, were ignoring what we had to say:

"An incidental benefit of clinical education is the improvement of delivery of legal services to the public."

The problem with that is that Congress is not the law school community. It is not a collection of law school deans. It is not a collection of Spencer Kimballs saying, "Show me". It is a collection of people who give out money for things that they deem to be national priorities and on a list of 1 to 100, 99th comes better trained lawyers for Congress, and it will never move higher -- never.

Any sales that we try to make on the basis of "This is good for legal education. This is what legal education means," is designed to sell absolutely nothing to that audience. Do not forget who's feeling you when you're talking to them.

This is not the law school community and, therefore, what Edgar said (See Discussion) is not only the appropriate pitch morally, but, from a purely cynical point of view, it is the only pitch.

We are a service delivery institution. We provide services to the disenfranchised. We may -- although obviously not through Title XI as it is now funded -- may someday change the nature of the delivery of the legal mechanism in the United States. Title XI will not necessarily be the foundation for that. We don't have to promise that. We can promise short-term things.

In that connection, I think it is crystal clear that all of us, on an individual basis, school by school, could demonstrate the nature of the kind of services we have delivered and the cost effectiveness of that.

The heart of that pitch is that we can tap an immense pool of free volunteer help, the minds and hearts -- perhaps more hearts than minds -- of second and third and, in many cases, first year law students working without compensation, other than credit -- and, in some cases, not even that -- to provide services primarily for indigents.

Now that may not be how we want to define clinical legal education in our own home community. That isn't what we struggle to try to analyze in faculty meetings. But we are dealing with Congress, and that has to be the primary thrust.

I am here today partly as a preacher, before I get into the title of my topic, because I think it's more important -- what I'm saying now -- than the rest of what I'm going to say.

My intent when we leave here is -- besides getting the names of everybody -- is to use all of you as individual lobbyists from now on. Do not forget that we have two target audiences even within Congress. I want you to keep both in mind but, again, for different purposes.

The authorizing committees -- the House Education and Labor, and the Senate Resources Committee -- are going to have to deal with us next year. Title XI is not forever. It is a program that dies on September 30th, 1979, and we have to get it reauthorized.

We are going to have to come back and move, starting next year, to become part of the educational community.

Wayne McCormack and I, on occasion, attend a meeting of a group called EFFORT, which is the full-funding education lobby, where we are viewed as unwanted step-sisters. They have no interest in legal education in any way, shape or form.

They're in there for billions for elementary and secondary and higher education. We have to go out and do our own work.

But when we deal with the authorizing committees which establish the guidelines that you may not like, that you may fight against, and the kinds of regulations that Dr. Bigelow drafts in light of congressional limitations, there you should be encouraged to talk about what clinical legal education ought to do for legal education. That's where it may be appropriate to tinker with the guidelines -- next year in authorizing.

But this year and every year in appropriations it has to be, "We deliver more for less."

It's about time that we started to become adversary or, at least, for a while -- let's just hold our breath - to the Legal Services Corporation.

They have never been here with us in any meaningful metaphysical sense. They seem to think that lawyers for legal services programs are hatched and somehow are not given birth by schools.

I think we can tell the Congress that we can do it better than they can, and cheaper than they can and, if you want to, on top of what they do. We haven't said that in the past because we view ourselves as part of a broader legal community, but we are the starting part of that broader legal community.

Legal services has gone from $70 million to $200 plus million. We have gone from zero to one, and a precarious one at that.

We are going to have to fight for ourselves and kick a little dust in their face to get more. Now, how much more?

Last year we went in and I think we asked for $2 million. That was our bottom pitch. Of course, therefore, that was the maximum they were going to give us.

We made it in the House and our primary, but not exclusive supporter, was Congressman Flood. Now, Dan Flood still runs that House appropriations subcommittee. And, while he still sits there, he will continue to support us.

But we have to go well beyond that particularly because last year our problem was in the Senate. Senator Magnuson, and not only Senator Magnuson, but several others -- Magnuson now is the chairman of the entire Senate Appropriations Committee, as well as the subcommittee that funds, if it does, this program -- were absolutely negative to providing a nickel of Federal money to legal education.

"We don't need more lawyers. What are we paying to have more lawyers for? There are not enough jobs for them anyway." That is how they understood the issue.

This year we will have to explain our more economical and effective delivery perspective to every member of the Senate Appropriations Committee and, indeed, as many Members of the entire Senate as we can for fear of losing in the Appropriations Committee and needing to fight on the Floor.

So I am going to ask all of you, in writing as well as today, to become active lobbyists. That bill has been on the books for nine and a half years and nobody has done anything meaningful with respect to it.

It is easier to lobby Congress than it is to write proposals for CLEPR or other foundations, or state and local governments -- and, in terms of dollar leverage, it works better. It isn't $10,000 or $15,000. It's millions.

I suppose this year we are going to have to shoot for something reasonable like $5 million and then, over the course of the next few years, try to change the authorization which currently sets a ceiling at $7.5 million.

They know that. They are going to be resisting that. They're going to see this as the opening wedge. Obviously, we have a top ceiling. I was not here yesterday when Dean Swords spoke, but I gather that $15 to $20 million is the figure we could ask for and fund all of clinical legal education from the Federal level. Obviously, we don't expect or anticipate, and shouldn't do that.

But we should anticipate that, from now on, we are a permanent self-interest group, a permanent lobby. I urge all of you -- and I

will give you the dates -- to contact your Congressmen and Senators not by a letter in Washington and, hopefully, not through your deans -- although I'm a dean -- because the deans think about clinical legal education as part of the spectrum of legal education, and clinicians sometimes think about the clients.

It's the client pitch and the service pitch that's going to work with Congress, and not some broader nonsense about better trained lawyers. Valid that well may be, but it is valid in a different forum at a different time.

We have to become like the other educational programs which have, in the past 13 years -- and that's all it's been since that federal money has been pouring into education -- developed their own built-in lobby in the bureaucracies in the Executive Branch. We have nothing. We are all outside. It's all us. There's nobody in there that loves us. They are probably always, in a budget review -- zero-based budgeting -- going to put us back to zero and we are going to go to the Congress to come up from zero to whatever figure we desire -- hopefully, this year, something like $5 million. Only you are going to be able to do that. The Executive Branch will not do it for you.

It's more than sitting and listening to speeches. It's actually pushing the Congressmen. You are going to have to do that by developing data on how many clients your clinic served, who the people were, what the cost was. You want to do a unit cost per case.

Do the same thing other lobbies do -- prepare supportive statistics if you want to continue to survive with the best hope of soft core money that we know of, which at the moment is Title XI -- the best and the biggest pot.

For all of the other governmental sources of funding, we go in by the back door. LEAA is through the back door, other parts of HEW are through the back door, but this is the front door funding which has the title "Clinical Education" on it.

It is obvious, nonetheless, that approximately 83 percent of all clinical education is funded through the law schools and not through state and local sources, not through foundations, and not through Uncle Sam.

Hopefully, we can turn that around because that means it comes out of the pocketbooks of your students.

I don't know how many of you have faced this problem of law school support of clinical programs. I do it openly because I like to provoke the faculty. For the past two years I have prepared an analysis of the per student credit hour cost of clinical education as opposed to a seminar for 25, as opposed to throwing 125 students in the classroom with one professor for a third or a fourth of his teaching load.

This year, and these figures may shock you, because Georgetown does not do things cheaply, the most expensive of my clinics -- cost, per student, $12,300 to deliver on a student tuition base under $4,000.

In other words, the student that took that course was getting for probably a third of his law school credits in his third or second year three times plus what he had paid in tuition.

My most expensive advocacy program ran $4,966, or $1,000 more than tuition for about 50 percent of a student's curriculum.

As opposed to that, there are the core courses that cost about $100 a credit to deliver and, therefore, $200 or $300 a student to deliver.

It's very hard to justify that disparity in the law school community. They don't care about service. They are not worried about indigents.

What they are worried about is how, in a democratic system, you justify spending $12,300 on one student and $200 on another for a given number of credits.

Well, there is an answer. John Rawls gave the answer. First of all, you have to get your clinical program big enough so that everybody has the opportunity, if he or she wished, to get the $12,300, even if they don't in fact do so.

That's the only morally acceptable way in which you can sell that kind of cost differential if you are open about the differential. I'm sure most of you are not that open. I think I was stupid to be, but at least it gets the facts out on the table for the faculty to debate. You can tell they don't love it very much when they see that.

But you have to at least have a clinical program large enough to offer the hope -- that almost everyone who applied, if they wished -- and they ultimately all will not -- could have access.

We have, over the course of the years now, graduated about 50 percent of our graduating class of 500 and some odd, with some form of clinical experience -- by no means all advocacy. About 30 percnet of the class will have had an advocacy clinical experience, have been in court or in a hearing representing clients.

The total Georgetown costs this year were approximately -- fiscal 1978 -- $816,000, which is about eight percent of our budget. We are not far off from the national average in that respect.

Of this, $463,000 were internally hard core funded dollars and $353,000 came from non-Georgetown sources. That ratio over the past five years has progressively moved upward and we are clearly moving toward the day when that $353,000 will be down to around $100,000 or $150,000 and we will have a constant (save for inflation) $650,000 or $700,000 built into student tuition dollar funding every year.

How do you accomplish that? When you have the man grabbing the trunk instead of the tail, your approach necessarily changes. In the academy you have to sell clinical legal education as the best form of legal education. To do that, you have to plan a lobbying campaign for a different audience the same way you would plan a lobbying campaign for the Congress.

I think yesterday was a classic instance of how you do that. The way we have accomplished it is, in part, by letting the academicians loose, by putting the Spencer Kimballs on the committees that review, evaluate, and control the clinics.

What you find, unless it is a totally hostile law school environment, is that everybody who is exposed to the clinical experience comes away, however previously hostile, convinced of the academic value of that experience.

Therefore, any planning committee and any ongoing evaluative committee of clinics ought to consist, at a minimum, of 60% of the "Where's the article you wrote this week for the Law Review?" - types, and not clinicians. That is the only way to inspire confidence and trust. It is the only way to build in appropriate lobbyists on your own behalf who are respected as non-clinicians by other members of the faculty.

It has worked at Georgetown. We have fights. We have funding fights. We come close, but if I count the margin of votes it is normally the people who have evaluated, looked at the clinics, even though they will never teach in them in the course of their academic careers.

Secondly, not only do you have to plan and incorporate the academicians as the major part of that planning and evaluative process, but you also have to look at everything five years down the road. That may be impossible. As a dean, I realize that.

But unless you do that you are dead. I no longer think it is meaningful to seek a foundation grant simply because it is available unless you say to yourself, "What do I do with these people? Where do I get the money for them in 1983?"

That's just as true of Title XI as it is of a CLEPR grant. Last year we entertained discussions with CLEPR about one of their programs involving raising the salaries of lower-level clinicians, and we projected it four or five years into the future, we realized that it would cost us too much in terms of other program plans we had for clinics to absorb the cost of raising everybody's salary on a different basis than we were otherwise going to raise the academicians.

Even if clinicians are underpaid from the school's priority point of view vis-a-vis clinics, it would have been foolish for us to take the initial bite at the money because we would have to swallow the apple and we would have choked on it.

Everything has to be thought of in terms of what happens when th outside buck disappears. The only way you get from soft to hard core funding meaningfully, without raising student tuitions beyond repair, is carefully avoiding the easy money that's within reach for tomorrow's program.

The other aspect of that we have had to face -- Jason Newman is in this room, he can tell you because he's an expert at applying it -- is the political fear of killing the clinic if you don't come up with the hard money. That fear is no longer in most cases, an academic fear -- "Well, the students won't have enough clinical programs."

That fear is a political pressure fear. When you go out in a community and offer a service over a given number of years, to the extent that that community becomes organized and dependent upon that service it is probably untenable to withdraw it. That is why, among other reasons, that if we get $5 or $7 million from Title XI, Congress will have to think twice about not funding the program because there will be a network of service delivery mechanisms, there will be alert and protective client constituencies.

Let me remind you of my hunger experience -- moving from $400 million to $9.8 billion. We did that first by playing on the country's guilt through a variety of mechanisms with, primarily upper middle-class white academicians urging the Congress to respond to poor people's needs vis-a-vis food. About five years ago the academicians were joined by the poor people themselves, the recipients of the programs, and, indeed, also other middle-class individuals who were delivering the programs -- who, themeselves, then had a dollar self-interest in the continuation of those programs ranging all the way from the people who run the lunch program to social workers who pass out food stamps and who otherwise would be on the unemployment rolls.

Clinical legal education doesn't have that support base yet. All we have is us, but if this program keeps going and Title XI builds up, you will have constituency groups to apply pressure. It doesn't have to be a dean calling a Congressman or Senator. It can be, and it is better if it is, the people who obtain the service, if the service is any good, who would like to keep it going, to keep it alive.

You have to recognize, therefore, the need to plan ahead, and the serious nature of political pressures if there is a threat to withdraw the program from the community because you were not careful enough to plan how you would fund it when outside sources ran out.

A third consideration that I think you ought to keep in mind in doing budgeting, to the extent that any of you get involved in budgeting -- and I urge all clinicians to spend as much time worrying about the budgets as worrying about the nature of the program -- is to try to put every single salary dollar you can into your hard core instruction budget.

Place the people rather than the direct expenses, into your ongoing instructional budget -- all the tenure eligibles first, all the non-tenure clinical academics thereafter -- and use them as you match for outside funds.

The instructional budget normally is the most accordion-like part of the budget. It is clearly the largest part of any law school budget.

You can accomplish that very easily. I am sure almost every clinic in the room is taught by clinicians who are not full time clinicians, who also are part of the academy for part of their time.

That's the best way to put your clinical money under the instructional table and, all of a sudden, you have it there in hard core form.

I don't have any other great secrets. There are none. There is only a constant struggle for survival, but it is a struggle that you have to plan to win.

You have to tailor your argument to your audience. It always strikes me as ridiculous that we train law students how to argue to judges and then we ourselves do not know how to argue to the academic community or to Congress.

We do not know how to deal with the audience we are facing. That is ridiculous. We have to change our ways of doing things.

Let us talk about the value of clinical education for training lawyers in the academy. Let us talk about serving the disenfranchised when we are before Congress. And then let us do both as part of our program of clinical legal education.

THE FEDERAL RESPONSIBILITY FOR CLINICAL LEGAL EDUCATION

John D. Scarlett
Dean and Professor of Law
Drake University

I'm always reluctant to follow John Kramer on a program because he's a very dynamic man and I frequently find myself in disagreement with him, as I do this morning.

I think a number of the things that John says are very true, but I think the fact that my butt is probably one of the ones he says we've been sitting on for the last ten years gets my back up a little bit.

One of the problems that legal education has faced from the very beginning of its effort to get some kind of help from the Federal Government is the fact that legal education is a misnomer. There is no such thing. There is no such entity.

Any kind of unified position representing legal education must be developed, and the support for it must be developed as well. This is the kind of effort which John is talking about, in which I agree with him thoroughly.

One of the interesting things is that John suggests that he does not want to use the ABA. He does not want to use the deans. And he does not want to use any of the other normal channels.

He wants to use you. I agree with that approach wholeheartedly, and that is primarily what I am up here to say this morning, too.

Unfortunately, ten years ago you weren't here and the deans had not begun to think about Federal support for legislation, and neither had the AALS - and, obviously, neither had Congress.

Legal education has always been the bastard child of the Federal higher education program from the very beginning. Perhaps the most outstanding example of that is the fact that when the Higher Education Facilities Act was passed back in the mid-1960s and the first law school grant proposal came in, the response of HEW was, "Well, let's see, there are two programs here. One is a graduate program and one is an undergraduate program."

At that time, many law schools still had the 3/3 program under which you got your undergraduate degree at the end of your first year in law school. HEW looked at this widespread system and said, "Hum, you have a lot of undergraduates in your school so you don't qualify under this graduate program. At the same time most of your students are graduate students so you don't qualify under the undergraduate program. It looks as though you have been left out of this bill."

That was the stance that they took until a monumental effort by Mike Cardozo up on the Hill generated a little bit of congressional pressure to indicate to HEW that they didn't really intend to leave the law schools out of the Higher Education Facilities Act.

I think, perhaps, another clear indication of the lack of interest of Congress in legal education is the obvious contrast between what the medical schools have been able to do and what we've been able to do, not just in the area of the Health Professions Education Act - which, as was pointed out to us earlier, provides over $200 million a year for medical education - but also, a much more pointed example, the National Medical Library, for which Congress provides $25 million a year.

Now, if this country needs a National Medical Library, obviously it needs, much worse, a National Law Library or a national center for legal data retrieval.

These are the kinds of attitudes which we found when we first went to Congress. We went initially with a very broad program for aid to legal education which received precisely the reception that John indicates he thinks it would receive today, and I'm inclined to agree with him.

This began back in the mid-1960s when a few people got together and drafted a legal professions education act along the same lines as the Health Professions Education Act, and took it to the ABA and several other interested groups for their collaboration, approval, and support.

It went through a series of meetings among the organizations and eventually came out in the form of the National Law Foundation bill which provided, essentially, for a great deal of assistance to legal education. In recognition of the same kinds of problems that John Kramer has pointed out, it also addressed itself to the criminal justice system, to the justice system in general, to solving some of the problems there, and to providing better and more legal services.

It's interesting to see what has happened to that bill in the interim. Originally it received an almost open-arms reception in the Judiciary Committees of both Houses. It was introduced in the House by the House Majority Leader, Congressman Celler, and in the Senate by the Senate Minority Leader, Senator Dirkson.

Both of them, unfortunately, disappeared from the scene very quickly, but in the process, during the last ten years, that initial bill has evolved into a proposal which is now being pushed by the ABA for a National Institute of Justice.

A little bit sarcastically, our "friends" in the ABA have changed the bill to the extent that legal education is now, to a large part, specifically written out of the bill with the exception of a few provisions which provide for some overall justice system research in the law schools.

The National Law Foundation bill, however, led directly to the genesis of Title XI. As a result of the introduction of that bill, Senator Morse invited the Association of American Law Schools to send a group down to testify before his Education Committee on the National Law Foundation bill.

They went, and have gone many years since then, but as a result of that testimony Senator Morse suggested that, "The Higher Education Act is coming up for re-enactment next year. Why don't you also come back and take a narrower shot at some support, and testify before that committee?"

The AALS, once again, accepted the invitation and discovered in the course of that testimony that Senator Brewster had, for a number of years, been pushing a bill to provide training in the law schools in the defense of criminal cases involving indigents.

The two groups got together and drafted what eventually turned out to be Title XI.

Immediately, the battle shifted from trying to get something in the form of authorization legislation to trying to get appropriations, and it's been there ever since. In the first year, the timing was way off. The bill setting up the authorization was passed way after the appropriations bills were already through the mark-up sessions and on the way through the sytem, and nothing was even possible the first year.

But the second year the Association of American Law Schools - largely through Mike Cardozo, Peter Wolff, and through the use of the Government Relations Committee - mounted exactly the kind of an effort which John is suggesting must be mounted now. It was chanelled through the law school deans, who were about the only law school people we had to work with back home, and through state and local bar associations.

First, an educational effort was mounted to tell the deans and bar groups what clinical education could be all about and why they should be interested in it, on both of the levels that John has suggested, and a selling effort was mounted all across the 48 states in an attempt to generate the kind of back-home support which you need.

Now, unfortunately, the mechanisms for mounting such an effort back in those days involved largely the law school deans and the ABA organization. As John has suggested, these people have many irons in the fire, and clinical legal education was only one very small one.

However, during the first two years - in each of the first two years - we were successful in getting one of the two Appropriations Committees to put, in each case, $1 million into Title XI. The first year, we couldn't even get it out of sub-committee. The full committee refused to go along with the million dollars and that year, through a bit of very interesting parliamentary maneuvering, Senator Pell got half of it restored on the Floor of the Senate and got us into the Conference Committee. As any congressional realist will realize, however, when neither of the two committees has approved an appropriation, getting it through the Conference Committee is an almost impossible task. It did not work that year.

The following year, the Senate Appropriations full committee did put the million dollars back in and, in that instance, our back-home efforts broke down rather abysmally.

At that point, the Government Relations Committee had firm commitments from bar association people and from law school deans to get to the people on the Conference Committee at the time the committee was meeting, and unfortunately about half of those commitments went unmet and some of our staunchest friends on the Conference Committee were not even there at the time the Title XI appropriation was discussed and voted down.

Following that time, we entertained in Washington a new Administration with a new philosophy of higher education. The Nixon Administration and, to a large extent, the Ford Administration, announced the policy of firm opposition to categorical aid programs. They approached the funding of higher education through the student funding channel, and funding channels other than direct institutional assistance for specific types of programs.

They went so far as to tell Congress in three of the years in which we were attempting to work with them during this period that if money was appropriated for Title XI it would not be spent, and that's a very difficult noose to stick your neck into.

At that point, Congressman Flood said, "I'm not going to waste money in a program which is never going to get off the ground anyway."

At that point, we began to feel a little bit like the member of the Swiss rescue team who got a call early one morning from a frantic lady who said that her husband had gone out mountain climbing the night before and had not returned, and she was very much afraid that he was lost and, perhaps, in serious trouble.

So the rescue team worker collected a bunch of people, sent out a rescue expedition, and they covered the hillsides and covered the mountains, and stayed out all day. It was along toward the end of the evening, when it was time to head back in, when he decided to go around one more mountain corner, and he did.

Across a small valley, he saw what appeared to be a body lying on a ledge across the way. So he called out across the valley and said, "Mr. Brown" - Mr. Brown, Mr. Brown - "Are you all right?" - are you all right, are you all right - "This is the Red Cross" - this is the Red Cross, this is the Red Cross.

No response. So he called out again, "Mr. Brown, are you all right? This is the Red Cross." - the Red Cross, the Red Cross.

At that point, the body across the way jumped up and waved frantically and he heard, coming back across the narrow valley, "Go back" - go back, go back - "I gave at the office."

As John suggested, the funding of Title XI in the past year was something of an accident, but not entirely an accident and it was not entirely due to Congressman Flood.

Congressman Neal Smith, who has been gradually working his way up within that subcommittee, has been interested in Title XI for some time and also agreed to support Title XI at this time. He has also agreed to make it one of his - as Bill Pincus suggested yesterday - "pet projects", which will certainly help us to keep the foothold that we have and to expand it.

But it's not going to work unless, as John suggests, the people in this room get behind it, because you are the interest group which is most directly involved.

Now, one of the things which we need to look at in addition to the funding problem that we face is what do we do next year when the time comes to re-enact Title XI?

A lot of things have happened since Title XI was enacted in the first place.

There have been a number of changes both in the monetary situation and on the Hill, and one of the problems we have to face is whether we are going to try to revise Title XI to take those changes into consideration, or whether we'e simply going to go ahead and try to get it funded in its present shape without trying to change it to take the present situation into consideration.

Some of the things that have happened in the interim, of course, have been the advent and the successful operation of CLEPR. This has changed the entire clinical situation.

When Title XI was initially conceived and drafted, it was designed to do the job that CLEPR has already done, to a large extent, in addition to providing ongoing funding for sound programs which have been proven.

Most law schools now have clinical legal education programs, as Peter Swords pointed out yesterday. Most of them are already extended almost to the limit with the clinical programs that they have developed.

The "carrot" technique which was built into Title XI and which CLEPR used so successfully is probably no longer necessary on the scale that it was when Title XI was originally conceived.

Programmatic needs have shifted rather dramatically in the interim, and may be shifting even more. Adequate supervision is still the number one name of the game as far as needs in clinical education are concerned, but there are also a number of other things which call for additional funding now which were not there when Title XI was originally created.

For example, there probably should not be a good in-house clinical office without a computerized terminal for electronic data research in it because, in the next ten years, every law office of any size in the country is going to have access to one.

There should be some form of computerized billing techniques in the clinical office. There should be some form of computerized boilerplate operation in the clinical office. There is a question of whether or not we should be using paralegals in the clinical office.

All of the places where the legal profession is moving, the clinical office ought to be on the cutting edge. This is the place where we ought to be innovating for the legal profession and, at the very least, training our students with the very best techniques that the legal profession has to offer.

There is a great deal of office hardware which most law offices have today which most clinical offices do not. The clinic office, especially the inhouse clinic office, ought to be the best law office available both insofar as facilities are concerned and insofar as procedures are concerned, because we should be training with the best, rather than with second-rate facilities, second-rate machinery and, in many instances, second-rate procedures.

But perhaps the greatest change of all since Title XI was introduced is the simple annual inflationary compounding which has diluted the original monetary concept of Title XI to the point where it is now a mere shadow of its former self.

When Title XI was originally conceived, very interestingly, the figure which was used as the figure which was needed to fund clinical education on a sound basis throughout the country was $15 million. On the basis of the figures which Peter gave us yesterday, that appears to be a pretty accurate estimate.

There was written into the bill a $75,000 per school limitation. It's still there. If you compound those two figures on the basis of a relatively conservative five percent inflation factor over the last ten years, you will find that the $75,000 would translate into $115,000, or thereabouts, and that the $15 million would translate into something like $23 million.

For purely political reasons at the time, the $15 million was cut back to $7.5 million and that, today, would translate into something like $16 million.

Therefore, one of the things which we will have to look at, and one of the things which Congress can also understand, is inflation and how much we want to try to use that lever to get the Title XI appropriation and the authorization changed next year.

These and other changes raise a set of problems which the people in this room, as well as the people in the AALS and the ABA, need to address themselves to over the next two years.

I don't know how many of you have read Title XI recently, but let me just read you the opening provisions of it to point up some of the problems and some of the decisions with which you are going to be faced within the next year and which we ought to be thinking about and addressing ourselves to.

The opening paragraph reads as follows: "The Commissioner is authorized to enter into grants or contracts with accredited law schools in the states for the purpose of paying not to exceed 90 percent of the cost of establishing or expanding programs in such schools to provide clinical experience to students in the practice of law, with

preference being given to programs providing such experience, to the extent practicable, in the preparation and trial of cases."

Now, I know after listening to some of you yesterday that there are some of you who would very much like to rewrite that introductory provision.

Then there follows a list of allowable expenditures. "Such costs may include necessary expenditures incurred for planning, training of faculty members and salary for additional faculty members, travel and per diem for faculty and students, reasonable stipends for students for work in the public service performed as part of any such program at a time other than during the regular academic year, equipment and library resources, and such other items as are allowed pursuant to regulations issued by the Commissioner.

"For the purpose of this Subchapter, the term 'accredited law school' means any law school which is accredited by a nationally recognized accrediting agency or association approved by the Commissioner for this purpose."

Well, that raises a number of problems. Perhaps the most obvious of them is - there is an interesting problem that's really of interest to only three law schools directly, but I think it's of interest to all of us. That's the fact that it starts out saying, "In the states . . .," and if HEW reads that literally I would assume that the three Puerto Rican law schools cannot participate in Title XI and, certainly, I would think that that should be clarified. The District of Columbia might also be involved.

There is also the question of whether we want to attempt to do anything about the 90/10 matching provisions. I would assume that most of us could probably still come up with ten percent, but as our programs get larger that might get more and more difficult, and it might be something that we would like to address ourselves to.

There is the question of the $75,000 per school limit which might seriously interfere with some innovative programs in some of the larger clinical program schools.

There is the question of, if we raise it, how high do we raise it, or do we try to eliminate it entirely? There is the question of what happens to the $7.5 million authorization. Do we try to raise that before we get it funded fully, or do we try to fund it fully first?

If we try to raise it, where do we peg that?

Finally, there is the question of the allowable expenditures. Should we try to revise that list, or should we operate - at least, unless and until some problems develop - through subsection (6) which provides that the Commissioner's office can make regulations to take care of things not covered in the list?

These are questions to which we should be addressing ourselves over the next few years, and they are questions which are going to have to involve the deans and they are going to have to involve you, obviously - and they are probably going to have to involve the people from whom we need national level support and from whom we certainly can use local level support, including the ABA, NLADA, and some of the other national organizations.

Regardless of which way we decide to go on these problems, we must begin right now to do the kind of things which John has already indicated are essential. We have to develop a firm support base for our position and we have to address that support base to the different constituencies that we are dealing with - and we have to design that support base in such a way that it can be translated into votes, primarily in the essential committees on both sides of Congress, the Appropriations Committees and the authorization Education Committees.

You people need to take every opportunity that you have not only to do the things that John is going to ask you to do, but also to continue and intensify the education process with your own deans so that when and if you or John needs to call on them they will already understand the program thoroughly and, if it is possible to get them enthusiastically involved, you will already have done that.

You need also to begin the same kind of job with your state and local bar people. These people can be extremely influential from back home. The ABA Washington office has always been very cooperative and has been very helpful, but you need to develop that kind of support back home because that's where the pressure is effective.

That's going to depend, to a large extent, on you people, the people sitting in this room today. You are now the interested constituent group. You are the ones who are going to have to make it go if it's going to go. You will have help from a number of different sources, but the monkey's going to be primarily on your back.

Whether or not the committee and Millard and Wayne are able to do the job in Washington that needs to be done is going to depend to a large extent on what kind of help they can get from you and whether you are serious in your commitment and whether you are firm in your support.

If you will provide that kind of firmness and that kind of support and that kind of effort, I don't think there is any question but that Title XI, alone, can become a very important factor in what happens in the law schools in the next ten or fifteen years.

HEW GUIDELINES FOR FUNDING UNDER TITLE XI

Dr. Donald N. Bigelow
Office of Education
United States Department of
Health, Education, and Welfare

I would like to divide my time taking about 15 minutes to raise three major points, the third of which would be our regulations about which I'll speak almost not at all. Then you can have 15 minutes - I'll share my time with you - for questions, on the assumption that it's more important for me to hear your questions than for you to hear my great philosophical thoughts.

After listening to a bunch of lawyers for two days, I can't get up here and quietly read our regulations to you, as if I came from Washington just to read regulations. You know the word no longer comes from Washington, so I can speak more or less freely.

The word comes from all over and, in any case, I certainly haven't been asked to bring it. But I do have some impressions, having observed what's going on and having learned a lot about clinical education since I inherited the program less than a year ago. I would like to share some of those thoughts with you.

I will talk about these three categories in order to keep myself honest and on time. The first is that I'd like to say something about pedagogy. The second is that I'd like to talk a little bit about the climate of opinion in Washington, vis-a-vis Title XI, lawyers and money, as I see it. Thirdly, I'd like to say even less about our regulations.

I had not realized, although I should have, that lawyers were such a dreamy group. I knew they were more articulate than doctors, less bloody, but I hadn't really realized that they dreamt so well, so deeply and out loud.

It's been an interesting experience. One of your dreams, however, backs into something that I think is of considerable importance--and you are all aware of this. I tell you nothing new when I say the following, but I do want to reiterate the point, and not by way of summing up, either.

For it does seem to me that clinical legal education--which probably does not describe the full extent of what it is you're up to--is an awkward title, perhaps even somewhat unclear. Nevertheless, one has to plant a flag somewhere and your flag has been firmly planted.

Like all flags, it also requires people to walk behind it, some to march ahead of it, to lead the way, and lots of people to wave it--and that's what we've been doing here for two days.

Also, like most flags, it stands for more than just the flag itself. In this instance, I'am not wholly sure how many of your colleagues who aren't here realize that you're not just talking about supervision

for 10 or 12 people, and that you're not just talking about course work for seven hours, or whatever. You're talking more about the curriculum, the law school curriculum. And you're talking about much more than that, I think--you're talking about education. More exactly: you're talking about challenging the system.

For, in effect, of course, that's what clinical legal education is all about--at least as I observe it. That is why the terminology really doesn't matter.

But it does matter whether you get lost in just fighting for the name of the thing that you began, or whether you begin to fight for the larger goal that is implied.

For, clinical legal education seems to me to be asking a basic question about teaching law, about, if you will, pedagogy--an old-fashioned term now not even used by teacher education interestingly enough. When they joined the universities, they abandoned the phrase "pedagogy" as a guid pro quo.

It's too bad, because that's pretty much all they had going for them: and it was fundamental.

They were talking about the right thing, once upon a time. As a private citizen, of course, I look to the day when teacher education is abandoned as an education unit, and we either have a liberal arts education, or go back to normal schools and talk about pedagogy, or we "go clinical" where teachers learn by doing, under supervision.

You are beginning to do just that. Medicine does it, but they don't talk about it as much because it's a bloodier operation, which only helps to confuse the issue.

But you're talking about it. I don't believe teacher education has talked about pedagogy in 50 years, and you're talking about it even in the face of a caste system of elite lawyers where one wouldn't even expect to hear the word.

It seems to me that you ought to celebrate these two days. You ought to wave the flag of clinical legal education. You ought, indeed, to be happy about the men whom you've identified who have helped you. You ought to be glad of that $7 million.

And, at the same time, you ought to see that it was seed money, a mere pittance; because if you're fighting the system it takes more than just a good start, more than $7 or $8 million.

It's that that leads me to the bridge between my first and second points.

There was someone I once knew in my language and area days. He was a Sanskritist, a great man, Professor Norman Brown, unfortunately now dead, from the University of Pennsylvania. He had great dreams for the teaching of modern Indian languages <u>in</u> India. He was a Sanskritist of great reknown and he was one of the great leaders in graduate education who helped the University of Pennsylvania to develop one of the strongest language and area programs on India in the country, which it still has.

One of his dreams was based on the notion of clinical experience. By the way, the road is filled with people who have believed in clinical experiences, under different flags and in different ways, much of which came to a head under the term "community" in the 1960s, I think.

Norman Brown wanted to be able to send his research scholars to India--to have a place there - to be able to study under the proper conditions - and that cost a lot of money. He used to have a little black notebook that he would carry in his breast pocket. As he got this much from the State Department, that much from Ford, this much from H.E.W., and that much from the University - and this much from his wife - and so forth--he would note it down. All the figures were in that little book, and he knew just where he was going with it, how much he had at any moment--but always looking for more money. He finally raised the million dollars or so that it took to put this institute together. I think it was in Poona--in the middle of India.

I met him one day and said, "Norman, now that you have your institute, what's going to happen when the million dollars runs out?" He said, "I'll have to go back and get another million dollars." That's the lesson to learn.

My point is this. You need millions of dollars, I think, and you need them for a long time. And you'll need an outside supply of funds since the money that's inside is going to support the status quo.

The seed money, the $7 million that you were lucky enough to get was sufficient to get you started. I'm not saying you need hundreds of millions (you may), but you're talking about big money--over a long period of time--if you're going to challenge the system.

And if you're challenging the system - and it seems to me that you are - then you have to talk about it seriously in terms of a long-range and expensive problem, and you can't expect to get the kind of help that you need locally because, generally, the very people whom you ask to give you the money won't if only because they are in charge of the system you're opposing.

But you know all this all too well. And that leads to the second point: the climate of opinion in Washington concerning raising money at the Federal level.

The question is where to go? For there are many agencies in Washington concerned with education, and it's not always easy to identify what is meant by "education." Sometimes efforts in the Department of Labor can genuinely be labeled "education," while sometimes money spent by the Office of Education itself has little to do with educational change, per se. For instance, of the 1979 budget for the Office of Education presented recently by Mr. Carter, which totals over $11-½ billion, sixty per-cent (or almost $7 billion) is allocated for programs in elementary and secondary education, almost half of which goes to "disadvantaged children" under Title I of the Elementary and Secondary Education Act of 1965. To support Higher Education, almost $4-½ billion dollars is being requested, the bulk of which--over four billion, extends the Office's commitment to help qualified students receive a postsecondary education through direct grants and loans. As you can see, those

two items alone account for most of the budget. And a great deal of it is very properly concerned with access; far less is concerned with educational reform--and none is identified for "clinical education" for law schools. These are facts. This is the way the budget looks in reality. Far, far from the dreams you are spinning out here. Your concern is pedagogy; the great concern of the Office at the present time is access to excellence. Your concerns do not fall under the rubric of the handicapped or special education; of grants for college students, of emphasis on desegregation for elementary and secondary education, and, indeed, I would be hard put to advise you where to go in Washington today, or to what foundation, for that matter. The experiments of the sixties have fallen on different times; a rat-trap was not a home.

But even if you were to get another million dollars-- and it's not in the budget--it isn't that it would not be helpful, (anybody wants a little bit more money, soft or hard, I find), but it's not enough to make the difference. So if, as I think you are, you are talking about a basic issue, pedagogy, and you're attacking the present system of teaching law, then it seems to me you should correspondingly talk about getting the kind of money that it needs to do the job correctly - I don't mean to give up because it's difficult - but rather to look at the problems you have in Washington realistically in today's climate of action where access, a long over-due effort, is more the natural follow-up to the Civil Rights laws of the Sixties than is educational reform.

Meanwhile, it is true that you have sounded to me exactly like every other academic group that I've known over the last 18 years.

Remember, I have already said that I'm very susceptible and I agree with you that you have a need. It seems to me that you ought better than you have, to be able to learn how to meet that need if you're very serious about it.

I suspect your bigger problems are with your own colleagues and not members of the Congress. I also suspect you have a lot of friends in Congress. Most Administrative Assistants are just out of law school, and if you can't reach them, you can't reach anybody.

It seems to me that you have to recognize who the important enemy is--it's probably your own societies and your own faculties; and then you have to decide how to deal with them, not just pretend that the Ford Foundation or its successor or someone is going to come along and bail you out.

Now to the final point.

Our regulations - copies of which were in the hallway outside, all of which were duly published - were given their present shape, quite literally, by six or seven people in this audience, among others.

They are not perfect regulations but they are good. They'll do the job. They are adequate to the task ahead and, by the way, my feeling is that the law itself, as written, is more than adequate to help you continue your efforts so fairly started.

Your problem is not to find a word here or there in the law nor a mistake here or there in our funding criteria, I think. Your problem - as I've just tried to indicate, is to understand the nature of your fight, and to find out where you can get the funds that are needed.

Now, having dismissed our regulations as being of no major influence; let me say a little bit more on this score:

It's going to be difficult for us to be "fair" about a million dollars since there are lots of programs in need of money. It's harder to be fair to everyone if we had $100 million.

We probably won't please a lot of people by getting the money out to a few, but we will try. We don't know how many proposals we will get - some say as few as 40 - because we're late, it's soft money, there's not much, it isn't worth the effort. Some say we'll get 80. I don't know, and only time will tell.

We'll read proposals. The closing date will be May 24th. The application package has gone to the printer and we will send it out, on or before March 24th.

That gives anybody who gets hold of them - and if you don't, write us, (they usually go to the wrong people) - more than a month and a half to write a proposal.

As nearly as I can tell the biggest problem this year is that most places need money to support themselves, to continue what they are already doing. But, as you know, historically, the law was written to do what has since been done by CLEPR, to provide seed money.

We are duty bound to obey the law and we are doing so; but that does raise some serious and very logical questions.

One Dean wrote, from one of your well known law schools, complaining that the funding criteria penalized those "good places" already established, and that they talked more about quantitative than qualitative efforts, and that we didn't meet the real need of providing money to stay in business, which is what he wanted.

I believe that we've said enough about "quality" in the regulation to indicate that it is indeed a basic concern. But there is a sense of "quantitative" need too--and the problem was--in writing these funding criteria, that we were writing them as if CLEPR had not existed for some ten years.

Therefore, in writing the regulations, we did sound as if we were commencing something that you have already fairly started.

I learned a long time ago not to cut the Federal cheese too thin. I hope you've learned the same thing. The problem is not to argue with our million dollars, or who gets it. The problem is that while we are going to make a good many of you angry in the coming months, you ought not to be distracted from the real job ahead. And that is to continue to do your homework, to learn more about the implications of fighting for pedagogy, of fighting the system, and to see where you get the money you need to recruit the troops you need to do the job you have set for yourselves, so ably and so well.

THE PROFESSION'S INTEREST IN CLINICAL LEGAL EDUCATION

S. Shepherd Tate
President-Elect
American Bar Association

When Wayne McCormack called my office to request that I say a few words after dinner tonight, I was reminded of the story of the Christian who was thrown to the lions in the Coliseum. Just as the Christian was about to be devoured by the lion, he whispered something in the lion's ear. The lion slinked away. As the crowd roared its approval, the Emperor summoned the Christian to stand before him.

"What magic did you perform to make the lion slink away? The Emperor demanded.

"Noble Emperor, it was no magic," the Christain responded. "I just told the lion that after he ate me, he would be expected to say a few words."

Tonight, I find myself in a much more fortunate position than either that Christian or lion. First, I am here in the friendly surroundings of Vanderbilt University. Second, I have no reluctance whatsoever in saying a few words about the legal profession's interest in clinical legal education.

Education about the law is one of the primary acitvities of the American Bar Association, and one in which I am deeply interested. Our Youth Education for Citizenshp project fosters programs to teach primary and secondary school children about the legal process. At the college level, the ABA has recently obtained funding from the National Endowment for the Humanities to develop a pilot project on the interrelationship of law and the humanities and social sciences. These activities are extremely important. They help educate the general public about their legal rights and the functioning of the justice system.

Legal education, of course, is a special concern of the American Bar Association. As you know, the ABA is officially recognized by the U.S. Office of Education as the national accrediting agency for law schools. In fulfilling our accreditation responsibilities, the ABA and the Section of Legal Education and Admissions to the Bar works closely with the Association of American Law Schools.

The ABA has also directed its attention to the issue of advanced judicial and legal education. We helped found the National Judicial College, the prototype of judicial education. Just recently, we established a new Task Force to monitor all developments in advanced judicial and legal education. And to assist the practicing attorney, the ABA has been quite active and successful in promoting continuing legal education through the Standing Committee on Continuing Education of the Bar.

While addressing the broad field of law-related and legal education, the ABA has by no means ignored the specific issue of clinical legal education. In 1971, the Board of Govenors approved, and the House of Delegates subsequently ratified, a resolution authorizing the Law Student Division to launch a campaign in support of federal funding for clinical legal education through Title XI, and in 1972, the ABA House of Delegates reiterated its position and urged "that the President of the United States request funding for clinical legal education and that the Congress of the United States appropriate funds therefor."

Several ABA entities are currently addressing the issue of clinical legal education. This is one of the topics being considered by the ABA Special Committee for a Study of Legal Education, which is expected to report to the House of Delegates at the 1978 Annual Meeting. In addition, the Section of Legal Education and Admissions to the Bar supports a Committee on Clinical Legal Education.

Recently, the ABA and AALS established a new Clinical Legal Education Guidelines Committee. As many of you know, this Committee was funded by the Council on Legal Education for Professional Responsibility to conduct up to a three-year study. I am confident that this Committee, which is chaired by Robert B. McKay, former dean of New York University Law School, will provide sound advice and strong leadership in the development of guidelines.

Why is the organized bar so concerned about clinical legal education? Briefly, I will suggest at least three reasons. By the way, I am pleased that all three reasons were included in Professor Rivkin's excellent scholarly presentation this afternoon.

First, clinical legal education promotes lawyer competence by providing practical experience to law students.

As many of you know, there was some controversy at the ABA Mid-year Meeting over Chief Justice Burger's comments about the incompetence of trial lawyers. Of course, trial lawyers constitute a small percentage of the legal profession. And my experience in federal court does not lead me to the conclusion that a substantial portion of the trial bar is incompetent. But the percentage, high or low, is not the key issue.

Even if there is just one incompetent attorney, that is one too many. That is the Chief Justice's concern, and that is the concern of the American Bar Association. The ABA tries to increase competence in many ways, including the accreditation of law schools, continuing legal education and disciplinary procedures.

The ABA efforts to promote lawyer competence are assisted by clinical legal education programs, which acquaint future lawyers with some of the practical skills and information necessary for the successful practice of law. In addition, clinical legal education aids law students in making wise career choices through exposure to private practitioners, legal service organizations, governmental agencies, and judges. More knowledgeable career choices by students will obviously result in more competent services to clients.

Second, clinical legal education promotes professional responsibility.

Lawyer ethics and discipline are issues of utmost concern to the American Bar Association and to me personally. ABA President Wm. B. Spann, Jr. has exercised crucial leadership in this area by appointing a top-flight committee to study the ABA model Code of Professional Responsibility, which is advisory to the states. Dean Ray Patterson of Emory Law School, who is here tonight, is the reporter for this Committee. This Committee is studying the Code, which is ten years old, to assure that it fully reflects changes in our society during this decade.

One of the aims of this reevaluation of the Code is to clarify ambiguities so that lawyers can be more certain that their conduct is consistent with highest ethical standards. But whatever words are developed to describe ethical conduct, they will be meaningless until put into practice. Clinical legal education contributes significantly to the ethics of the profession by exposing law students to practical ethical issues which lawyers encounter daily.

Third, clinical legal education promotes pro bono activities.

All lawyers have a responsibility to contribute time and expertise to organizations and individuals who cannot afford to pay legal fees. Unfortunately, not all of us -- by a long shot -- follow that imperative.

One past President of the ABA, Chesterfield Smith, has repeatedly called for mandatory pro bono work. He is not alone. Legislation to that end has been introduced in at least one state. I do not favor mandating public responsibility, but I recognize that this may be attempted unless more of us voluntarily do what we know we should do.

Clinical programs involving services to indigent clients acquaint law students with the need for and benefits of pro bono work. Through such programs, law students and their supervising attorneys provide needed services to the indigent while demonstrating the legal profession's commitment to the public interest.

Lawyer competence, professional responsibility and pro bono activities are all crucial issues facing the legal profession. I commend those of you who have given many years, even entire careers, to promoting these vital interests through clinical legal education. Let me assure you that the ABA is concerned and does care about clinical legal education.

The thrust of today's discussion was the urgency of support for continued and increased federal funding.

I am reminded of the story of the World War II veteran who, in a nostalgic mood, was recently trying on his old uniform. As he was putting on the pants, he discovered in one of the pockets a shoe repair claim ticket from 1942. He decided to take the claim ticket to the shop and see if, by any chance, the shoes were still there. With some embarrassment, he handed the ticket to the elderly shop owner. To his

surprise, the owner took the ticket and went to the back of the shop to look for the shoes. In a few minutes, the owner returned. "We have the shoes," he said. "They will be ready Friday."

What we have heard today is that we cannot wait until Friday.

Thank you for inviting me to attend this conference, for affording me the opportunity to learn more about this subject, and for giving me the privilege of sharing these brief thoughts with you.

(The following question was posed to Mr. Tate following his remarks.)

LESTER BRICKMAN (Professor of Law, Yeshiva University): Mr. Tate, your remarks about clinical legal education are the most supportive ever made by an ABA president and all of us here are most appreciative. The question I would like to pose involves several factual situations of which you are likely unaware and therefore would not now be in a position to respond to. Accordingly, I preface my question by requesting a response after you have had an opportunity to apprise yourself of the relevant facts.

Recently, several law schools have initiated clinical programs involving tax practice at post filling levels, that is, at the audit and appellate levels. In order for these programs to secure adequate numbers of clients they have found it necessary to advertise their availability. The Internal Revenue Service has conditioned approval of the request upon approval by the respective state bar associations. In New York, the state bar delegated that veto power to, among others, the Nassau County Bar and the latter vetoed the posting of signs in the IRS offices indicating the availability of audit help. As you see it, is delegation by the IRS of this veto power to state bar associations and/or the action of the Nassau County Bar consistent with the policies you have just articulated?

A second part of my question involves the Hofstra Tax Clinic which sought approval by the Tax Court of a student practice rule permitting student practice before the Tax Court in the same manner as its students now practice before the federal District Court for the Eastern District of New York. The Tax Court invited the views of the Tax Section of the ABA. The latter in turn essentially delegated the task to its Small Taxpayer Assistant Committee which issued a report on May 18, 1977 which can only be characterized as uninformed, tinged with self-interest if not immersed in it, and intended to secure a negative response from the Tax Court. Just such a negative response was elicited. Interestingly, neither the views of the Council of the Section of Legal Education and Admission to the Bar nor its Subcommittee on Clinical Legal Education were solicited.

I ask you then to review this whole matter to determine whether the Tax Section's actions are consistent with the policies regarding clinical legal education that you just articulated and if not, what you propose to do in response.

MR. TATE: I am most interested in what you have to say and will certainly look into the matter.

COMMENTARY

Junius L. Allison
Professor of Law
Vanderbilt University

When I first considered the implications and possibilities of Title XI, I was aware of what a full-funding would mean to our system of justice, but I wondered if the general public realized that there are sound, specific reasons for the federal government to do something substantial to encourage the practical training of law students. First, I think it is important that we point out what this program is not: It is not a subsidy to law schools for the general education of future lawyers, but is one designed to promote a special skill training. It is a project primarily to provide counsel for poor clients; so, it should not be confused with the purposes of the Legal Services Corporation. It does not represent a desire for the federal government to exercise control over legal education, but is is aimed at stimulating a unique aspect of our legal educational system.

Looking to the objectives of Title XI, it seems to me there are at least four ways in which clinical legal training differs from most law school programs.

1. The first of these has to do with costs as Peter Swords, Assistant Dean of Columbia University School of Law, after a study of typical programs, said "in fiscal terms, a clinical program constitutes a somewhat peculiar entity in the law school budget." Clinical work, in contrast to the traditional law classes, cannot be successful with large groups, say 100 or more students. Because of the nature of the practice of law and the need for close supervision of the legal interns, the student/teacher ratio must be low. Many experienced clinical directors say that the ratio should be no more than 10 students for each supervisor. Some say that the ideal arrangement would be 7 students per instructor. But, according to the Columbia study, the average ratio is 20/1. The average for law school courses in general is 25/1 -- and this includes the several small seminars in the course of study as well as the large class instruction in the first and second years. Without computing the actual cost per credit hour per student, one can easily see why the instructional expense of clinical teaching is comparatively high. And there are other costs that are peculiar to a program that requires a law office setting: a secretary for each group of 40 students; duplicating, telephone, postage, office supplies, travel and some court costs. This obviously higher cost per credit hour has been offset somewhat by the matching money grants from the Council on Legal Education for Professional Responsibility and by some demonstration project funding by LEAA. However, with both these sources being phased out, there is now an urgent need for federal assistance through Title XI.

2. The second reason is that there is a public service benefit that flows from such practical training programs. Inadequately educated lawyers constitute a gap in the administration of our court system so

serious that the Chief Justice of the United States Supreme Court has urged remedial action. Judge Irving Kaufman reports that a 13-month study shows that 7% of the lawyers appearing in the Second Circuit have been rated as "incompetent" by judges. The Chief Justice says that 50% of the trial lawyers are so deficient that their ineptness contributes to the back log of cases pending in our courts. It is no wonder that the Chief Justice and Judge Kaufman say that reform is necessary. Lawyers who are poorly prepared in trial techniques hamper the machinery of justice. The lack of precision in written documents, the fumbling oral presentations, the inability to weed out useless motions, the lack of skill in selecting and focusing upon key issues -- all contribute to costly bottlenecks in what should be the orderly and speedy process. When legal education moved from the apprentice system to the structured courses in law schools, something was lost in the change. This deficiency is overcome in the large law firms where orientation and practical in-service training can be required of the new employees. But the great number who join small firms or begin as solo practitioners have no such opportunities. So, not only for the client's sake but for the preservation of our adversary legal system, skilled training is essential.

3. A third benefit to the public can be documented with data on the number of clinical students who find careers in pro bono areas. For instance, in a survey of job placement for the last three years at Vanderbilt, we found that from a group of something over 300 clinical students, 14 found employment in Legal Services, 25 received clerkships with judges, 8 took positions with the Attorney General, and 29 accepted employment with other governmental agencies. Further, it is interesting to note that 17 of the clinic graduates began their practice in small towns where the need for lawyers is the greatest.

4. Then there is a fourth reason which should be considered even though it is only incidental or secondary to the principal objective of clinical training. I refer to a direct public service: assisting low income clients. This is usually provided in cooperation with Legal Services and the Public Defender and is more than the representation of clients. It is a supplementary support in the way of backup services given to the regular agencies established to provide counsel for the poor. In some areas the legal clinic is the only service available. Corrections is an example, where many law students operate limited programs to give advice to inmates on civil as well as criminal matters and the representation at hearings to revoke parole and probation. Even though this service is only a by-product of a clinical training unit, it is a valuable community resource.

To summarize my comments: The compelling reasons for an adequate funding of Title XI are obvious. If we in the law schools do not take the lead in communicating the needs to Congress, who will? Almost every key member of the Senate and House lives in a community where there is a law school dean and a faculty. Why not urge this network of knowledgeable friends to help in a real educational program?

COMMENTARY

David R. Barnhizer
Associate Professor of Law
Cleveland State University

I'd like to begin by making several administrative announcements. These are primarily for clinical teachers in the audience. I want you to be aware of the conferences that have been mentioned by Gene Scoles and Bill Pincus to enable those who want to attend to plan their summer schedules.

There will be a clinical teacher training conference between July 30 and August 5, 1978. You will shortly receive information in about a month. If you want to attend, I suggest you start thinking about making your plans in that context. That's the first thing.

The second preliminary matter I would like to raise deals with what Junius Allison has said. It relates to the building of a strong constituency for Title XI and the steps to be taken toward that end. An example of what must be done is indicated by the contributions of John Scarlett, Dean of Drake Law School. Dean Scarlett played a very important role in making sure that appropriate contacts were made with his Congressman in Iowa. Through those contacts Neal Smith had the wisdom to see the vital need for federal funding of clinical legal education and had a vital part in insuring the initial appropriation. Without that Title XI wouldn't be a reality today and I think the efforts of John Scarlett and Neal Smith must be recognized both in terms of appreciation of their past efforts and as an example of what must be done to insure further progress. That also indicates that, rather than leaving the thought that there should be some kind of lobbying organization as a pleasant abstraction, we must establish a network of clinical teachers and others committed to carrying forward the efforts to gain future funding and that the nucleus of that commitment can be taken from those present at this conference. I suggest, therefore, that those interested meet later this evening for that purpose.

If that does not occur, we will leave this conference with an idea but never really get it together. The AALS has done excellent work through John Kramer, through Wayne McCormack, Millard Ruud and Ken Pye. Bill Pincus testified and John Scarlett contributed immensely. While these individuals have contributed greatly, an effort must be undertaken to greatly expand the constituency communicating with Congress.

We must recognize that even though the AALS has evidenced a substantial and growing commitment to clinical education and its need for adequate funding, between 80 and 90 percent of its law teacher members are not clinicians. There has been a tension between traditional and clinical teachers. There are competing interests that institutions, such as the AALS and the ABA have when there are perceived schisms between preferences of a dominant majority and a minority group, such as clinical educators.

Clinical teachers and people with similar interests, therefore, must consider the issue of whether, at some point, the interests of the institutional representatives are sufficiently dissimilar from their own in terms of both the selection of appropriate ends to be achieved and the intensity of the pursuit. If there is disparity, and I am obviously suggesting there is, then clinical teachers must join and articulate their needs as a group -- as an entity -- with a series of common and aggressively advocated interests. The effort cannot and should not be left almost wholly to non-clinical teachers and administrators.

The third point I want to make is that I have been talking to Tom Ehrlich, President of the Legal Services Corporation. And I take issue with you on this, Bill (Pincus). I agree, as Ehrlich also agrees, that his "New Directions in Legal Education" written with Herb Packer was unfair to clinical education. It was, however, written in 1968 at a very early stage in the development of clinical legal education and he has altered his perspectives. He is, as I see it, a building supporter of clinical education and I also believe that will ultimately mean substantial sums of money for clinical education from the Corporation.

That will not occur overnight, and that does not mean every law school (or even most) will receive funding. But I do predict there will be some money available, probably in two years or so assuming good planning by clinical teachers so I would like that to be recognized. There is the possibility of some nexus between legal services and certain aspects of law school legal education and clinical education. That's my third point.

Fourth point, I agree with what has been said about Junius Allison. I would also like to say something about one other person and that's Bill Pincus. He is now sitting in about the middle of the auditorium.

When the history of legal education is written in 15 to 20 years, I very much think that Bill Pincus will go down in that history as having had one of the most significant impacts on legal education, not just clinical education, but all of legal education, since Christopher Langdell. I do not throw praise around casually, but I feel that there hasn't been enough appreciation of the fact that there has been an immense ripple effect from clinical education in trial advocacy courses, in non-clinical simulation courses, appellate advocacy courses, professional responsibility and others, and that in substantial part those changes can be identified and related to the efforts of one man who has been working at it for 15 years and I would ask you to recognize that, if you would. (Applause)

In this commentary I'd like to say that, as I sat and listened to numerous statements about how well clinical education has made inroads into legal education, and how much it is now accepted by traditional faculty members, I have been concerned with the lack of relationship these comments bear to the reality experienced by most clinical teachers. The support for clinical education has certainly increased but for many it remains a superficial commitment to a generalized "good thing" in the same way that most people would agree it is good to protect the environment and not pollute the lakes and streams.

But as I think Peter and Jim were trying to indicate, the real crunch comes at the point where it costs someone something to hold that

belief. If you evaluate the support within legal education for clinical programs in the context of what people are going to decide when it's going to cost them something, in terms of priority setting and reallocation of resources, you are going to find there's a lot less support within the law teaching, the non-clinical law teaching profession, for clinical programs than people like to pretend.

I think we are in a very, very dangerous time for clinical education. We are not in danger of clinical programs disappearing as a word, as a small adjunct to a law school. That is not the problem. They will remain in that sense. But if some efforts in the area of ABA funding, Legal Services funding, raising funds from law schools through private foundations and the private Bar and Title XI, aren't made, then I think again when that history of legal education is written in a few years clinical legal education will not have proven particularly consequential in the long run.

It's been a nice time for clinical teachers. We had a great amount of fun together. We had some nice conferences. It has some important spinoffs. But we will not have had any widespread impact on legal education in terms of the actual improvement of the Bar, education of law students, and distribution of legal services in this society.

This problem must be recognized. In many ways, it's an economic issue. It's an issue because the structure of legal education was created as a profit making entity 100 years ago under both the Harvard model and the proprietary school model. This means that a top heavy cost structure was created. When law schools were taken over by universities, pattern of "excess" income production being siphoned off by other departments were established. Thus there is greatly reduced flexibility in the university budget to significantly increase the share of money now going to law schools from that source.

The money is already being taken by the rest of the departments in the university and unless you're inordinately powerful as a law school within that university you're not going to get that money. It's already being used. We are also not going to get substantial growth in student enrollments so we will not have that increasing source of money which is what law schools lived on for the last 10 to 15 years.

The money, therefore, has to come from outside the law school. Since CLEPR is scheduled to go out of business at the end of 1979 and they can't fund any massive programs any more anyway, that source must be Title XI.

That means when you all write your grants, as you are here to find out about, please think about them and write good grants and try to come up with some very creative ideas and thoughts and ways to improve your clinical programs. It's extremely important. If you turn in poorly conceived proposals just because there happens to be one million dollars worth of money you are going to help bury the clinical movement itself by your actions.

Another reason there is not a substantial amount of support for clinical education as it stands right now, as Bill Pincus indicated, if we're talking about a clinical curriculum rather than a clinical course -- that will demand a major rethinking of the education, intellectual, and academic priorities of legal education.

Many people may accept clinical education for the limited purpose of saying, "Look, I like the guy. He's teaching it. He's doing a good job. He's keeping some students happy for a while." That's nice. Twenty, 30, 40 students in a law school. Fine.

If you are talking about reordering an entire curriculum, that is a fundamental conflict issue. If you are not talking about it you are probably not doing anything that's going to have any particularly great impact so I agree with Bill when he says it has to be done. But in seeking widespread curricular reform you are absolutely going to regenerate the philosophical conflict and hostility that existed when clinical education came in 1968 then everybody will say, "Look, it's nice to have as a step child. But this is not going to replace my course. This is not going to replace a library. It's not going to replace purchase of 10,000 books so it can update our library. It's not going to replace increased faculty salaries."

There will be a really tremendous conflict when you move in that direction. That has to be recognized but the conflict itself will prove to be a healthy one for legal education.

The final thing I really would like to say on this relates to the teaching of professional responsibility through the clinical method. This is the single, critical, unique goal that clinical education can do -- opening up the awareness of students before they are subjected to the peer pressure of the practicing Bar and what are abysmally low standards of quality of the practicing Bar. Before you expose students to low standards without a viable frame of reference of quality and professionalism, clinical education can provide a mechanism to instill understanding and a system of values that will enable them to perceive the deficiencies in the real system.

If a clinical program is done well, it can be superb. If it's done badly it can be negative, and I have real problems with that.

But if you deal with real questions of professional responsibility and professionalism you must deal with the structure of the ABA and the legal profession. You must deal with the structure of the Bar. You must deal with the inadequate economic base of most of the practitioners of law who couldn't have the time to do well on a case when they are doing a mass practice or a volume practice or a ciminal practice of certain kinds of cases even if they wanted to. Even if they had the skills, there is something about the economic structure and contradicts any real sense of quality and professional responsibility. There's something about judicial misconduct which is a very common issue and a very common problem for those of you who actually go into courts.

Warren Burger doesn't deal with the defects in the training, attitudes and behavior of judges. The incompetence and frequent venality of judges is really one of the most significant problems in tying up courts, and I agree again with Bill Pincus that there is an insensitivity at the judicial level to what some of the problems are.

But that is going to create an immense conflict when you say, "We really want to change the standards of the profession. We are challenging the standards of the profession. We are challenging their

disciplinary behavior or lack of disciplinary behavior. We are challenging the areas where they must try to repress essentially anyone who disagrees with what the existing position is." When you get into those issues; When you get into questions of societal treatment of poor people and indigent people by judges and bar associations, and individual lawyers then you will find you will not have a lot of support within the American Bar Association.

But if clinical programs don't confront those kinds of issues then I really don't think they are worth a lot. Therefore, when you draft grant proposals, keep in mind the goals of clinical education that you want to attain.

COMMENTARY

Wesley Ching
Staff Director
Law Student Division, American Bar Association

I should say that most of the work that was done by the Law Student Division took place prior to my being the Staff Director, but we're still very interested in clinical legal education and the continued funding of it.

At the outset, I would like to thank Professor Junius Allison for taking the time to see that the Law Student Division was a part of this Conference. We appreciate this opportunity not because we profess to have any great expertise in how to achieve increased funding and continued funding, but because we have a considerable interest and stake in the future directions of legal education and especially in clinical legal education.

I would like to take a few minutes, briefly, to recount the Law Student Division's efforts in the early 1970s to secure federal funding for clinical legal education under Title XI of the Higher Education Act.

In 1970, the Division undertook an extensive lobbying campaign designed to secure funding under Title XI for clinical legal education programs providing for actual law student experience in the preparation and trial of cases.

At the April 1971 meeting of the ABA Board of Governors -- and I believe President-Elect Tate spoke of this last night -- the Division was given approval for a plan to campaign for funding of Title XI.

Subsequently, the Division leaders initiated at the local law school level -- through its student bar association presidents, law student division representatives, circuit governors, and the like -- a letter-writing campaign to Senators and Congressmen, especially those sitting on the Senate and House Appropriations Subcommittees who were responsible for Title XI.

Meanwhile, the Division was also preparing a resolution to be introduced to the ABA House of Delegates at the 1972 mid-year meeting. The resolution adopted by the House continues to this day to be the ABA's stated policy position on clinical legal education.

I would like to read it to you in full:

"Whereas, there is a great need for the law schools of the United States to enhance the legal education experience by the establishment and expansion of extra-curricular and co-curricular programs to give law students relevant experience in the practice of law; and

"Whereas, there is a need in today's society for adequate and readily available legal services for the lower income citizens; and

"Whereas, law school clinical programs are uniquely appropriate to meet the aforementioned needs; and

"Whereas, clinical programs, to be successful, require new sources of financial support for legal education;

"Therefore, be it resolved that the American Bar Association strongly reiterates its support and approval of clinical legal education; and

"Be it further resolved that the American Bar Association respectfully urges that the President of the United States request funding for clinical legal education and the Congress of the United States appropriate funds therefor; and

"It is further resolved that the American Bar Association hereby requests the Law Student Division, the Section of Legal Education and Admissions to the Bar, and other concerned organizations within and without the Association to assist the Association in urging the President and Congress to fund programs of clinical legal education."

That remains the stated position of the ABA and, of course, we'd like to continue to lobby for clinical legal education as we seek continued funding and adequate funding.

I'd like to, at this time, make it clear that the Division and, of course, the 120,000 law students who are currently in law schools would like to renew their campaign to lobby for clinical legal education.

We stand ready to support any efforts by this group, by AALS, by the Section of Legal Education, and, in fact, we should all be working together to try to encourage Congress to provide adequate funding for clinical legal education.

I would like to make one more point. That is concerning one of the Division's current efforts in the past few years to improve clinical legal education. That is through the program we sponsor on client counselling.

As many of you know, today is the regional competition for our client counselling competition. We have about 120 law schools participating today and I suspect many of the professors who advise each of these teams would have liked to have been here.

I know that many who are involved in clinical legal education serve as coaches for the client counselling competition.

The program is designed to simulate a typical hypothetical consultation situation with students acting as attorneys and actors playing the roles of clients. It's a simulation program.

The originator of the competition, Professor Louis Brown of USC's Law Center, had two purposes in mind in establishing the competition. One was to provide law students with the opportunity to gain experience in law office interviewing and consultation with clients; and the second was to generate new legal teaching techniques and methods addressing the law office and preventive law.

Today, the competition involves, as I said, some 75 percent of all ABA-approved law schools in the regional competitions, and we hope to get it up to 100 percent, perhaps, in the not too distant future.

The reason I mention the competition is my belief that the teaching of client counselling and interviewing is an integral aspect of clinical legal education. We speak of lawyer incompetence in trial courts, as Chief Justice Burger has said on occasion in the past, but what about the law office and what goes on in the client interview?

We know very little about what goes on in the law office consultation situation, and we know very little about what should go on.

Law schools have addressed the need for adequate training of law students in trial and appellate courts, through trial advocacy courses, and moot court programs, but we should look at ways to avoid litigation and appeals, costly and lengthy as they are.

This can often be accomplished in the law office.

As a final note and as a comment to this morning's programs, I would just like to say that the law students present to you a potential for extensive lobbying if you are willing to tap this resource, and we stand ready to help you in any way that we can.

FLOOR DISCUSSION

(The following passages have been edited to produce a single unit, although they actually occurred in three distinct segments. Comments and questions have been identified by speaker wherever possible, using only last name for each comment after initial identification. Professor Eugene F. Scoles presided throughout.)

SCOLES: We would now like to invite comments or questions from the floor. Bill Pincus observed that while perhaps 30 percent of law students in legal education now were getting exposure to some clinical program, only 10 percent were in well-supervised programs which are adequately funded. That suggests that we ought to heed the warning that average statistics may be misleading because averages include the poor programs in the law school world. You do want to bear in mind that if we're going to upgrade clinical education, then averages must be seen for what they are, midpoints of the bad as well as the good.

DOUGLAS D. SCHERER (Assistant Professor of Law, New York Law School): One thing that disturbs me a bit is that I think we are making an admission against interest which is not necessary, that relates to strategy that we as persons concerned with clinical education should be developing. We are accepting uncritically, I think, the assumption that clinical legal education automatically costs more than traditional methodology. I think we have a burden on us as clinicians to develop more cost-effective ways of providing clinical education, and I think we need to recognize that there are types of clinical programs which develop practical skills, that are necessary to the profession, which are much less expensive than other types of programs. There are certain types of programs that must be done inhouse, in a simulated law firm structure, and many types of well-supervised programs that can be conducted outside the law school.

Most of us are affiliated with universities where there is financial retrenchment taking place. But I don't think we should start off our arguments, with the government or with our own universities, with the preface that clinical education costs substantially more and therefore requires outside funding. That tells the universities that the clinicians they are putting on tenure tracks are going to build in problems for the future.

SCOLES: Junius, both you and I, I think, talked about the problem of faculty-student ratios and the costs. I think it is true that most of us are assuming attorney-supervised client contact models.

Junius, would you like to make ay observation on this?

ALLISON: Well, I think we can reduce some of the costs but I don't see how we can ever teach the students for a per hour per student figure that will compare with say Torts, a course that would fill this room with one class.

What we have to have is, if not a one to one, as you indicated, a one to ten ratio, or a one to 15 ratio in order to do a good job of

supervision. I just don't think the instruction costs are ever going to be comparable to what you do in big classes.

Now, it is true even here in Vanderbilt we have many small seminars that I think would compare with what clinical education is now. I think Peter Swords brings that out in his study.

But I think we, at least to me, there's no escape from the additional costs when you change your ratio. Now if you could teach 25 to 50 with one instructor, I think you run into all sorts of ethical problems. You run into many things when you are representing clients in the court, with case supervision and malpractice suits and insurance -- that sort of thing -- that you just can't do it in great numbers.

SCOLES: Are there simulation or other techniques with which we have had enough experience to make an observation on this? David, do you have any comments?

BARNHIZER: In my experience, to do simulation well, and even if you are focusing on a narrow range of skill, to do simulation well you still have to put in enormous amounts of time with low faculty-student ratios. You can change the fact that it's a live case versus a non-live case and you can do that very creatively but you still have to spend a lot of money on teacher time, supervisory time, feedback time, the "one to one" give and take that characterizes the core of the clinical method.

Even if the teaching format involved simulated interviews, for it to be meaningful for the student you still have to give teacher input -- structured teacher input -- and invest pretty close to the time that they are doing the interview.

In addition to that you have to watch the interview. You have to see what's happening so you can effectively critique it and teach from it whether it's live or not. So I think the differences then tends to be that you don't have to carry the ongoing docket. You don't have to expend some secretarial expenses or office overhead expenses or purchase more supplies.

I think that tends to be a difference, although in our program, for example, we have almost a $200,000 a year budget and when you add it up something like 83 or 84 percent of that cost is faculty teacher cost and fringe benefits and so on. So, assuming you have to pay for the teachers anyway you are not going to save yourself a whole lot on that.

SCOLES: I suppose that one of the things in the use of simulations that you would have greater production and preparation initial start up costs and the problem would be balancing that against continued costs of the law office model. And certainly there is a need in this area for experimentation and really solid experience.

Bill Pincus, do you have any observations on this particular issue of costs? Further comments than you made earlier?

PINCUS: I think it's been aptly covered. There is no question that clinical education costs more. Of course, I agree with the suggestion that we don't need to trumpet that voluntarily the first time we meet somebody, but when we get down to making a case I think we have to recognize that that is a basic fact of life.

VOICE: Perhpas I can make one follow up comment. A thought struck me as Mr. Pincus was speaking, as he was describing the carry over that is beginning to occur to other more traditional courses including Procedure and Evidence, and it seems to me that if we view clinical education not strictly as attorney-client supervised contact, but as a methodology, we now can present it to faculty and to university administrators as being something that's essential to a well rounded education. And a methodology which in the context say of an Evidence course is much less expensive. And bury the fact that in thos portions of the clinical program dealing with lawyer-client relationships it may still be quite expensive because of the greater need.

SCOLES: Bill?

PINCUS: I don't want to bring this up but I can't neglect to mention this. I did touch on it in CLEPR's third bi-ennial report. I don't suppose anybody here remembers that. I wouldn't expect that.

But if you will refer to it -- I'm speaking of my part of it. The last couple of paragraphs touch on what is, I think, a fundamental issue which goes beyond the theme of what we discussed here.

Again, I don't think this is an argument against clinical. I don't think it undermines its merits or the need to put money into it, but there are some issues here. There is a problem here along the following lines. And that is if you take 120,000 law students which we now have enrolled in American law schools, it is going to cost more to educate so many law students if we get clinical education for law students. And I'll add the words a lot more. If this thing is going to have any value it is going to be something that every law student ought to have some exposure to. We don't know how much. We don't know how many hours.

Right now 84 percent of our law schools in fact put a narrow limitation of about 12 hours on the number of clinical credits students can take. I see the time coming when you turn it around. I have spoken about this. When a law student will not get his law degree if he doesn't have at least 12 hours in the clinic rather than being limited to 12 hours in the clinic.

Now, if that happens, taking into account what we know, we have to face the fact that we are asking the American society, the taxpayers, the parents, and everybody else involved, "How much are you willing to pay to make clinical experience available to how many lawyers?" Now, lawyers are not very popular to begin with.

I don't think I want to push this issue too hard at the moment. But it is something that is down the road that sooner or later we have to do some thinking about. And it confronts us with a dilemma. Would it be better to have 60,000 law students who are much better trained and cost us much more to graduate than to have 120,000 lawyers produced the way we are producing them now?

I don't know what the answer to all that is. It ties in, of course, with the whole shape of the future delivery system for legal services; the relationship of lawyers and those who are somewhat lower in the hierarchy like paralegals and so on and so forth. That complicates everything we are thinking about. I say for the moment we can't solve all those problems. Let's put them aside today and tomorrow, but let's start thinking about them in the near future.

I thought I'd just lay those things before you. There is a question here of a lot more money to train one more lawyer -- let's put it aside, as I say, and think about it next week.

ARTHUR RYMAN (Associate Dean for Clinical Programs and Professor of Law, Drake University): There's one thing that has been echoing through several of the presentations that I would like to comment on.

I taught Property Law for 15 years. I've got credentials as a certified academe, before I became perverted and went into clinical teaching. I think what I teach in clinics is jurisprudence.

But over and over again I have been hearing the word "skills training". Skills training as opposed to academic education. And I suspect that what I am doing in our clinic is far more jurisprudential education than what is going on in many of the classrooms in our law schools.

I don't think that clinical teachers should conceed that what we are doing as a primary purpose is skills training (with a sort of a slur on it).

The euphemism professional responsibility is an attempt, I think, to find a descriptive term to talk about maturation, growth, philosophical understanding, understanding based on reality and skills development which is what we are really aiming at. That term doesn't quite get the idea expressed either, with due respect to CLEPR. When I first heard it, I assumed it had to do with ethics, and I suspect a good many of our colleagues think that too. Of course ethics are part of clinical education, but not the primary purpose.

The point it that reality is what we are teaching with the clinic. And if that makes it less jurisprudential than classroom presentation or simulation I need to know why. I don't understand the idea that utilizing skills in a real case as a teaching technique should place the teacher in a lower level of activity. I think if we conceded that we are not teaching jurisprudence we will never achieve the recognition that is essential to our programs.

SCOLES: That may call for an improved articulation both of the cross fertilization from our traditional and our cinical experience with the spin-off of techniques. The utilization of the so called clinical programs to really identify the significance of other courses as well rather than simply a concentration upon, if you will, that area that I pejoratively referred to as a "how to do it."

We need further articulation of the intellectual rigor, the signficance for the total education of the clinical experience and techniques.

One of the things that was suggested to us was a rather direct appeal for more political activity by law schools. This is an area that John Scarlett has been active in. John, you might comment on what are some of the side effects that we might expect from participation in the lobbying effort that may seem necessary.

Certainly we need to be aware of the activities of the various arms of our profession. For example, the Committee on Government Relations and other informational activities of the Association of American Law Schools. Do you have any observations on that, John?

SCARLETT: Well, I think as you get involved in this kind of effort, one of the problems that we have had is generating political pressure on the national level plus the fact that there has really been no solid core within the law schools.

When we got Title XI enacted in the first place it was, as Bill Pincus pointed out, largely the result of efforts of a very small group of individuals talking to a small group of congressmen.

SCOLES: Could I interrupt you just a moment? By a small core do you mean people who are committed to clinical education or simply persons who are committed to lobbying activities?

SCARLETT: Well, I think initially it was a combination of both. People like Bill Pincus, Junius Allison, General Decker and some of the other people whose names have already been mentioned were deeply committed to clinical legal education. Some of us got involved through our interest in the lobbying end.

But as you can see from the fact that I have an Associate Dean running my clinical program I became committed to clinical legal education in the process. But one of the problems that we have is that most deans around the country are not that committed to clinical legal education. And as we attempted to develop a powerful lobbying effort to get Title XI funded, one of the problems that we ran into was that we were not able to generate firm support from all the law school deans.

And one of the things that has made it now more likely to do that kind of thing is that we have all the people sitting in this room that were not in that kind of position back in 1968 who now are. It gives us a much more solid base from which to start. These people have to work on the uncommitted deans and the uncommitted local bar presidents and the uncommitted people in the bar associations and the law schools, because we need all those people behind us if we are going to turn Title XI into a meaningful support for clinical legal education.

Title XI you know is really -- I'm now getting into my speech for tomorrow morning -- Title XI is really the tip of the iceberg. It grew out of the broader effort to provide resources for legal education. It grew out of the attempt to have a national law foundation set up.

Politically that's the way it got its genesis. And there isn't any reason why that effort should be jettisoned at this point. There are a lot of other places in legal education where we could use some additional funding.

You know, legal education for the 50 years between 1900 and 1950 was probably about as stagnant as any educational system in the country or anywhere else. Very little happened as far as innovations during that period.

Since that time a lot of things have happened, many of which are more expensive than the traditional means of teaching law students, all of which need additional resources and we also need to address ourselves to.

RUUD: Let me add a couple of things to what John Scarlett has said.

There is a problem, I suppose inertia is not the right word, of preoccupation. People in the law school have other problems. What we try to do out of our office relates to two kinds of legislative bodies, the House of Delegates of the American Bar Association and Congress.

From time to time the House of Delegates has on its agenda matters of significant importance to legal education. I placed in the hands of the deans and members of the AALS House of Representatives in late January a briefing paper on those items with the hope that a dean or someone on the faculty would identify a state delegate or other delegate from the state and go and talk to them about the issues.

John is certainly correct, you can do some things out of the national office with Congress, but votes go where the constituents make some kind of noise. My wife works in our congressman's office and the things that do not come from J. J. Pickle's constituents get filed and out the door that afternoon. That is natural. There may be some senators' and congressmen's offices that are different.

We tried to set up a similar network for Congress. We identified the committee members on the critical appropriations and authorization committees in the House and Senate. And then we made an effort to find out who can talk to Carl Perkins, for example. Well, Carl Perkins does not have a law school in his district. He has lots of coal mines but he does not have a law school.

We need to talk to somebody who can talk to Carl Perkins and brief him on Title XI, the federal depository bill or whatever.

ROB WILLIAMSON (Professor of Law, Southwestern University): We received a grant from CLEPR about two years ago to experiment with another source of money, namely client funding.

We charge reduced fees to people who fit within certain guidelines that we perceive are not eligible for legal services or don't use Legal Services, or can't afford the private bar.

It seems to me that one of the problems about shifting to hard funding for clinical programs, shifting to some funding that has some permanence is that foundations, the government and maybe the universities' desire to provide funding can change from year to year. Clients are always there. They need us.

As Legal Services Corporation grows, it will be able to serve the true indigent who can't afford service elsewhere. I think however the ABA study shows that there are tens of millions of low income Americans that cannot afford private bar but are over-qualified for Legal Services. That's a niche that I think the law schools might very well be able to fill. We certainly find ourselves able to do it.

There are some possible arguments that portions of the private bar would look upon the law schools' charging fees to low income people somehow as taking fees away from them. But our studies show we are dealing with people who wouldn't go to lawyers at all. We are exposing these people to the legal system and to some measure of justice that they didn't have before.

The reason why client income is important is that I think an income of $25,000 to $50,000 a year is attainable by most law schools. If you look at 160 schools in the nation, that's a four to eight million dollar a year source of income. I think it's significant. I don't think we can take the time to concentrate on this today but I know that people are beginning to do this now, for example, in Chicago and some law schools in California.

I think we have to start looking at the client as some source of money to help us with clinical education.

SPENCER KIMBALL (Executive Director, American Bar Foundation; Professor of Law, University of Chicago): I would like to make a couple of observations from a vantage point that is, perhaps, different from that of most of the people here. Those who know me personally know that I belong to an extreme, the academically, research-oriented wing of the profession.

I also teach at a law school, the University of Chicago, which most people would perceive to have that same perspective.

I did have the opportunity last year, however, of serving on a committee chaired by Ken Dam which had the responsibility of reconsidering the posture of the University of Chicago Law School with respect to its clinical program.

I had always been a skeptic about the value of clinical education, largely because of its image, as you put it, Mr. Chairman, as a how-to-do-it kind of activity. Perhaps a large part of the problem clinics have with the deans and with academically-oriented faculty members may lie in that traditional image of the clinical program.

I was persuaded, however, in the course of the several months that we engaged in our study at Chicago, that when it is done right clinical education can be very tough-minded and intellectually rigorous training in the stuff of the law, and particularly in that portion of the stuff of the law that is very difficult to teach in the ordinary classroom.

It is on that basis that I personally, the committee on which I served, and the law school made a commitment to the continuation of support from our own limited resources for our clinical program. That

posture is something that I think would surprise most of the people whose perception of Chicago - a correct one, I might add - is as a research-oriented, academically-oriented, university-directed kind of law school.

I would suggest that a large part of the problem of clinical education with faculties may very well be that it is seen to be soft and intellectually inferior. I am certain that some of it is. When I was Dean at Wisconsin, I was responsible for establishing some that I fear was intellectually inferior, although we had some that was very good, as well.

The challenge to the clinical programs, it seems to me - both for acceptance and support from the more academically-oriented members of the faculties they serve and also from potential funding sources - is to demonstrate that clinical education can be and is in fact a really significant, tough-minded, intellectually demanding part of the legal education process.

OTIS H. KING (Dean and Professor of Law, Texas Southern University): I was concerned about the discussion that we had with regard to law schools" seeking other sources of funding for their clinical program.

We have vigorously sought, and sometimes very successfully, to get these outside funds. I guess what I want to state is sort of a caveat with regard to the kinds of things that can happen when you receive funding to run a particular program and attempt to incorporate that program into an academic structure.

I would be concerned also that the Association of American Law Schools and, perhaps, the American Bar Association's Section on Legal Education address themselves to this area with regard to potential funding, particularly from the Federal Government. I will be specific.

Our problem has been that, in receiving short-term funding, we have found that, in some instances, it is more detrimental than beneficial to the operation of a comprehensive and continuing program, and we have just about reached the point - which is a hard decision to make when you are faced with limited resources - of rejecting short-term funding.

I would be quite concerned that as we pursue funding under Title XI, funding from EEOC, and funding from other HEW categorical sources that we send them a very clear message. That message is that we don't want one-year funding without some assurances of continued support. We don't want funding where the agencies dictate to us the kind of program that we are to operate, but we do want funding that will allow us to build comprehensive programs with the kind of continuity that will serve our particular objective of training law students to become better lawyers.

SCOLES: A point very well taken.

Any other comments?

SCARLETT: In listening to some of the comments, both here and out in the lobby, about funding sources, it seems to me that there is a need for some kind of a clearinghouse and exchange of information on funding sources. There are a lot of places where we might be competing, but there are a lot of places where we are not competing.

For example, one of the things that we have done and, I gather, that a few other people have done, too, is to work out a prosecutor internship program using, first of all, crime commission funds and then getting the state to pick up the funding for the program. And there are probably people in this room that have funding sources that I could use.

I think there is a need for some kind of an exchange mechanism so that we have access to all possible funding sources that anyone has developed so far that might be helpful to us.

SCOLES: Certainly, one of the things that comes through rather loud and clear is that individual schools are trying to find alternative methods of funding from any source at all, and they are not simply relying solely upon an application or petition to the Federal Government for this.

It also seems to be that most of the available sources are at or very close to exhaustion. We need new sources because the existing sources are not particularly encouraging.

Most university administrators, and others involved in higher education where our sources of funding come, view this as just another part of the law school operation, and they don't see any real reason to treat the law schools any more exceptionally than they already do.

Likewise, those of us who have had experience with alums and law firms are not overly encouraged with the prospects of further assistance from those sources. The profession already is providing substantial assistance to legal education, although we need to explore new avenues of approach within the profession as well.

One of the questions that occurred earlier regarding the statistics concerned the definition of "clinical program" for determining those average costs. Peter Swords, did it, for example, include courses in professional responsibility where some tapes are used and similar courses?

SWORDS: It did not include that.

We broke it down into client contact programs, simulation programs, it probably did include all trial advocacy programs, and what we call placement.

The "other" category had a few lines for the schools to explain what the others were. There were very few of them and, by and large, they were pretty much in the same tradition.

EDGAR CAHN (Dean and Professor of Law, Antioch): I want to express my own personal evaluation of the job Peter did. I think it was superb.

I think the implications of what you say are important and they go beyond, I think, even what you said because the Federal Government's role over the past couple of decades has generally been with a concern for dealing with groups that are disenfranchised or dealing with problem areas that the states are not geared up to deal with, and dealing with problems of either exclusion or lack of access in many areas that generate major social problems that are not dealt with where the normal political processes do not seem capable of responding.

I think if we deal with that we have to understand that, so to speak, the need or markets of the Federal Government or the goal that the Federal Government has to address or ought to address is one not of legal services, but of justice - that that is a constitutional proposition in the Preamble of the Constitution.

It is one that we as law students have to deal with. If one looks to the history of the health professions, the concern and the grants were not to train finer neurosurgeons, primarily, but were dealing with new professions, new knowledge, new delivery systems, and the distribution problem.

To the extent that we have defined the issue of clinical education in terms of skills and in terms of a system of dispute resolution which the corporations and the wealthy know to avoid when they move to arbitration and mediation, but which they seem unwilling to let the poor learn from, we ourselves have to deal with questions of the contribution of legal education or what I would call the regressive impact of legal education in perpetuating and elevating what may be archaic or obsolete modes of dispute resolution and advocacy and, if you would, social engineering in the interests of a more just society.

I think the kinds of work not only that Antioch is doing, but that Eric Sirulnik is doing at GW in terms of training paralegals in the area of the aged in terms of training the aged themselves, that Jay Newman has been doing in the Street Law Academy, and that other folks have been reaching for is a significant part not of clinical legal education, but of the justice professions that ought to be thought of as alive justice professions.

If we are going to approach this from the prospective of Federal agendas and national goals, we have to think of them as alive professions in the same way that one things of alive health professions.

That will mean, in turn, that there will be crises. Just as they have had to in health education, we will have to address, perhaps, the issue of maldistribution, the issue of what it costs to become a lawyer, the issue of who has access to that, the issue of credentialing, the issues of monopoly over knowledge of the legal education, and all of those have implications for the present law school curriculum, for the relationship of legal education to undergraduate curriculum, and even for the high school curriculum.

We must begin to deal with the issue of the justice professions and the need for this society to become a more just society. Then there are chances, I think, of our dealing with our profession's normative obligations, but with legitimate and what ought to be pressing Federal obligations and it becomes more real.

LEROY PERNELL (Assistant Professor, Ohio State University): First, Professor Ruud, I would like to mention that Ohio State no longer has a group legal service program. This is part of the problem of soft funding.

Secondly, I would like to, in a sense, follow the comments of Dean Cahn on the question of the justice of adequately funded clinical education.

I have not heard yet anyone suggest the possibility of the judiciary becoming more involved in the funding of legal education. I think, particularly with regard to the service aspect of legal education, that the courts may, in fact, have a responsibility to assure that avenues to such services are available to the judiciary system, not only for direct appointment of cases, but to articulate issues that often are presented by such programs to the court systems.

Regarding the cost aspect which has been touched on many times, I think that it may be important to bear in mind that when you talk about the costs of education we have to realize that the cost that is suffered by the community because of poorly-funded, or under-funded education programs, in many ways may be greater than the other costs combined because the costs that, I think, are suffered because of the poorly-funded education programs is a cost that, in large part, is borne by not only the law schools and the students, but by the client as well.

It is borne in the form of poor supervision and poor representation so that there may be an ethical responsibility on the part of potential funding sources and on the part of law schools to assure that there is an appropriate level of funding in clinical education so as to achieve the legitimate goals of clinical education without sacrificing ethical standards or causing the client to suffer in the process.

RUUD: Just an item of information.

I don't know what the story is now, but for some time Joel Finer ran an appellate - it was called an appellate criminal law seminar, but basically - with Judge John R. Brown's support - what they did was to provide appellate work for indigents who were taking cases to the Fifth Circuit.

Now, I don't know whether that has disappeared or whether it's replicated anywhere else. It was a marvelous clinical experience for the few students that could participate in it. They not only helped draft or helped talk through what the arguments ought to be and draft the briefs, but actually attended the arguments - went to New Orleans and saw the arguments.

We were trying last night to think of instances in which the judiciary has actually done something in funding clinical education. This is one of the instances I know about.

RIVKIN: I haven't thought through its implications thoroughly, but in working with our Federal Judge, Robert L. Taylor, in his work on the Devit Committee (and he's on the subcommittee that dealt with the question of student practice in Federal courts), I am convinced that there is widespread support among the judiciary for clinical legal education.

I expect when the report is filed many of us are going to be talking to Federal Judges about establishing programs for the first time. I think there should come out of that a better understanding of motivations and the like.

ERIC SIRULNIK (Professor of Law and Director of Clinical Programs, George Washington University): Earlier, somebody mentioned that when clinicians get together and have a crisis, they tend to circle their wagons. I think we do, but we tend only to throw rocks, and often at each other.

I was very happy to hear Dean Cahn's dissertation in terms of constitutional proportions, but I would urge a further extension in that we not only take our plea to the Federal Government in terms of funding, but to the judiciary, and also to the state and local bar associations.

I can't help but imagine what the fantastic effect would be if state bar associations passed requirements for 14 hours of clinical law before individuals could be admitted to the membership of that bar. Think of the deadwood courses that would fall by the wayside.

We might have to deal with the issue of tenured professors, but we can get to that next year.

(The following questions were posed to Dr. Bigelow at the conclusion of his remarks. In most instances, the speakers did not identify themselves and the editors have been unable to do so.)

VOICE: Dr. Bigelow, whether we like it or not, the grant is for seed money, demonstration programs. It seems to me that your criteria would have included some demonstration on our part of our ability after the first year to keep going whatever it is you fund. Yet that doesn't seem to be in here. I am wondering whether you want us to include that in our proposals or not.

DR. BIGELOW: Normally, you would be quite right. We would indeed have included some criterion to indicate that how well you had done would (or would not) have some bearing on the subsequent year. But there is no next year. The conference report specifically made this a one-year demonstration. And the Congress is the boss. Thus our regulations do not contain any provision for permanence since, by law, we had to write these criteria as if they were for one year only.

VOICE: Is it important in our proposal to say that if we can get a $25,000 or $50,000 demonstration grant it will permit us to do X new programs and we will then, a year from now, be able to maintain that program because, by then, we will find some other sources? Do you want us to deal with how we will try to keep going what you allow us to start?

DR. BIGELOW: It would seem to me that any good proposal would have to say how these funds and this effort will allow you to continue to demonstrate once the foundation is laid.

I don't mean to be ironic. You have put your finger on a sensitive issue, but if we had implied that what you did would be helpful in some way other than to demonstrate what you were doing, we could have implied fiscal assistance next year which we are not able to suggest.

Therefore, I think, in terms of what you've said, we might have found a better way, to have been more subtle, or to have indicates that there was more to the "demonstration" than we did.

I would hope perceptive and "creative" writers of proposals would follow your advice and read into our funding criteria, correctly, the need to provide such additional information.

VOICE: Dr. Bigelow, it was suggested earlier that the lobbying approach to Congress, after a period of time, should focus on delivery of services. This is somewhat inconsistent with the reception of clinical education as a methodology in which education comes first.

Do you think that it is necessary, in the short term at least, to focus on delivery of services in order to get funding? What kind of strategy, short-term and long-term, would you suggest?

DR. BIGELOW: A civil servant - as you all know, being lawyers - is not allowed to lobby and I won't. But I think it is okay if I try to answer this question.

It would seem to me that I would take issue with "the delivery of service" as the way to go. While it might well be a guise under which something might happen, I think you would be running the risk of having to provide services when what you are after is improved teaching in law schools. That's why I went out of my way to say that it seemed to me you are fighting the system. Now, it may be you have to be very subtle, or way out in left field, and make strange and awkward movements. Perhaps you'll have to get under any mother hen that you can, but most mother hens take over.

VOICE: Who will make the decisions - what people - on the grant awards, and when could we anticipate that those decisions will be made?

DR. BIGELOW: Depending on how many proposals we estimate we are going to get - and I'm listening and I'm asking questions of people here because I don't know - we have some evidence in terms of CLEPR, we have some statements of people here - we will have a certain ratio of field readers to proposals.

Right now, let's say, we might get about ten people for four days. Those field readers would be chosen from people in clinical education or deans of law schools, this audience. There should be someone who is more traditional and conservative; there should be somebody who is more "left wing" than just left, and there should be people who are practitioners and experienced in the field - and we'll try to get ten such people. Some of them may be sitting in this room right now.

They will be invited and paid $150 a day for three or four days, plus travel expenses to come and read proposals. We will have made certain elementary forms, based on the funding criteria and the assigned rating and then make recommendations based on the ranking left by your peers.

It will be our job to think of geographical distribution, to consider whether or not this is, indeed, a demonstration program, but for the most part we'll take as many as there is money for off the top, more or less routinely.

VOICE: The date?

DR. BIGELOW: The present time schedule is that proposals are due on May 24th. And we'll read proposals during the first week of June.

Normally, the official announcement would be two months later, at least, since the contracts and grants people take over from us, and this will be their busy season.

VOICE: I have two questions. The first deals with the ten percent that the school must pay. The question is, is that hard dollars or soft dollars as we have been describing it? In other words, if we allocate a portion of my time as an Associate Dean, is it in soft dollars?

DR. BIGELOW: Yes, very soft.

VOICE: The other question deals with university overhead or, as my people call it, indirects. They claim they have a negotiated rate now at something like 62 percent of salaries which HEW has been buying.

What is your attitude going to be about indirect or university overhead?

DR. BIGELOW: No indirect costs will be provided for these training grants.

VOICE: Over what period of time must a grantee expend the funds?

DR. BIGELOW: The grantee cannot spend funds until he has a grant signed by the Office of Education which might not be much before the end of September.

The grantee, in theory, may not even obligate any funds until he has the grant. It must be spent - it may be spent even after the year is over, but for activities that occur from October 1st to September 30th of the next year.

VOICE: There are dollar limits on the amount that you will give out per application. Suppose a school asks for more money than that or, in the alternative, asks for that dollar limit, will you either give what they ask for or nothing, or will you proportionately allocate funds?

DR. BIGELOW: It's not all or nothing. The fact is that once we get the recommended list from the review panel, and if somebody asks for $75,000, which by law is allowed, and our criteria have said 30 to 40 thousand dollars is the average, unless the people who evaluated it have said, "This is exceptional. It's just down from Mars. They don't have a nickel. They ought to be started tomorrow. And they should have $75,000," we'll listen, but mostly we'll try to get 20 to 30 places as we have announced.

So we will then say, "Well, they wanted $60,000, $70,000." We will have asked the evaluators to recommend what they think is a fair figure, and -- now this is why we can't announce the program early -- it's then up to the contracting officer to call up the people and say, "We are willing to negotiate with you for $37,500 instead of $64,000. Will you consider it?" That's what would happen at this point, and that's more normal than not.

Does that answer your question?

VOICE: There's no penalty, then, for asking for more than what you might allocate?

DR. BIGELOW: No penalty except this: If you ask for $75,000, presumably the proposal justifies it.

A badly built proposal that "justifies" $75,000 is very hard to judge, if you are only going to give them $35,000. So it does mean that there's a built-in weakness between A and B by virtue of the ultimate determination to cut. The narrative, presumably, doesn't justify the proposed cut.

Does that answer you?

VOICE: I have two sort of, maybe difficult questions.

First of all, when you talk about the time limit, it's perfectly clear that it's going to be very difficult to budget any program starting in the middle of October and ending in August. Is there any way that your office can ease that problem for us?

DR. BIGELOW: I'm afraid not.

As Wayne McCormack will testify, within weeks after we knew we had the money, we took the first major step. Since then the simple problem of going up through the Office of Education to the Secretary and back, waiting for a comment period, doing everything that's in the regulations for democracy's sake has put us on this belated timetable.

The die is cast, and the answer is no.

Now, there's another side to that. In another program, which has occupied most of our time, called the "Graduate and Professional Opportunities Program" - which is also open to law, by the way, for minorities - we have had to go through this same lengthy process.

My feeling is that if you and your adminstration aren't willing to take the gamble -- in terms of time -- you oughtn't to write the proposal in the first place.

You can, in good faith, write the proposal and you might be able to use that good faith to your advantage with your institution - that is, if you weren't lawyers - and nobody laughed on that second one at all, but you do take yourselves so seriously --

Your second question?

VOICE: My second question is, assuming that some of the dreams pan out and we end up with $2 or $5 million next year, are you going to be sympathetic or unsympathetic to continuation grants, and will you give a priority?

DR. BIGELOW: You know, even with these historians like myself, logic prevails. How could we be unsympathetic?

But there would be a new set of rules.

CHARLES MARSON (Associate Professor of Law, Stanford University): I do not see in the regulations provisions for funding simulation. Is that a right reading of the guidelines?

DR. BIGELOW: Yes, that's a right reading of the regulations and ten of your colleagues.

MARSON: Which ones?

DR. BIGELOW: I can't recall this minute, but it will be public information, and we can tell you.

VOICE: It might be pointed out that the statute says that such experience shall be provided to the extent practicable in the preparation and trial of actual cases.

DR. BIGELOW: There was a hairline decision there, but we made a decision, right?

BRICKMAN: I would like to propose a joint effort between the AALS and the Office of Education that I think will augment chances for additional funding in the future.

The AALS should request all law schools intending to apply for Title XI money to send the Association a one page information sheet that would indicate how much money would have been applied for and for what purposes had there not been the $75,000 limitation. Based upon a list of applicant schools to be provided by Dr. Bigelow, a follow-up letter should be sent to schools that have applied for Title XI funding but have not yet supplied the requested information. This information can then be assembled for use by the Office of Education and the Association in testifying on the need for additional funding. Specifically, it will indicate in a more accurate manner the dimension of the need than would information that the Office of Education could compile from simply reading the applications and adding up the differences between the amounts requested (limited by the artificial ceiling) and the amounts granted.

DR. BIGELOW: The real point is that we can't ask for any more information. Since you're limited to $75,000, we probably won't get a good reading of what you might have asked for, I can only say that I understand and am sympathetic to what you have just said.

In closing - I don't usually read other people outloud in public, but I thought Art Buchwald had the final word from Washington.

After he read what Chief Justice Warren Burger had said, out of the country, and then, subsequently, in it, Buchwald said he thinks the Chief Justice is all wrong. "It isn't the bad lawyers who are screwing up the justice system. It's the good lawyers.

"The competent trial lawyers know how to postpone a case and string it out twice as long as necessary. They know how to file every conceivable motion and eventually make every known or unknown appeal.

"A competent, first-class lawyer can tie up a case in knots, not only for the jury, but for the judge as well. If you have two competent lawyers on opposite sides, a trial that should take three days could easily last six months. And there isn't a thing anybody can do about it."